

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-15-90023  
No. DC-15-90024

A CHARGE OF JUDICIAL  
MISCONDUCT OR DISABILITY

**Before:** TATEL, *Acting Chief Judge of the Circuit*

## ORDER

Upon consideration of the complaint herein, filed against a judge of the United States Court of Appeals for the District of Columbia Circuit and 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. 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 the complainant, the subject judges, 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).



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David S. Tatel, Acting Chief Judge  
District of Columbia Circuit

Date: \_\_\_\_\_

1/14/2016

## MEMORANDUM

Complainant has filed a combined Judicial Complaint, docketed as Nos. DC-15-90023, against a judge of the United States District Court for the District of Columbia, and DC-15-90024, against a judge of the United States Court of Appeals for the District of Columbia Circuit. The complainant's allegations arise from the subject judges' involvement in cases brought by the complainant in the courts of this circuit, and in the disposition of a prior complaint that this complainant filed against two other judges. For the following reasons, complainant's allegations do not warrant action against the subject judges.

Complainant has filed or been a party to a number of cases in the courts of this circuit. The judges who are the subject of the instant complaint participated in the disposition of one or more of these cases. In addition, the subject judges participated, as Acting Chief Judge and as a member of the Circuit Judicial Council, in the consideration and disposition of a judicial complaint filed by this complainant against two members of the circuit court of appeals, alleging misconduct in their handling of his court cases.

In the "First Case of Misconduct" in the instant complaint, complainant alleges that the subject of complaint No. DC-15-90024 "collaborated" with one of the judges named in the prior complaint, to transfer one of his cases to the district court, "in violation of the Hobbs Act." This allegation, however, is "directly related to the merits of a decision or procedural ruling," and therefore "must be dismissed." See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS Rule 11(c)(1)(B); 28 U.S.C. § 352(b)(1)(A)(ii).

In his "Second Case of Misconduct," complainant alleges that the subject judges, by participating in the consideration of the prior complaint against the two circuit judges, violated Judicial Misconduct Rule 25(b), which provides that "[a] subject judge is

disqualified from considering a complaint...” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS Rule 25(b). Complainant argues that because his prior complaint referred to misconduct by the two circuit judges “and possibly others,” the subjects of the instant complaint should have known that they were encompassed in the allegations of misconduct, and thus disqualified.

Complainant’s allegations, however, do not warrant action against these judges. Cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS Rule 3(h)(3)(A). Complainant’s citation of authority regarding a judge’s knowledge gained in a prior proceeding is inapposite to a misconduct proceeding, which is administrative in nature, and not subject to the recusal standards that apply to judicial proceedings. See *In re Complaint of Judicial Misconduct*, 591 F.3d 638, 647-648 (U.S. Jud. Conf. 2009). Personal knowledge of relevant facts does not necessarily disqualify a judge from participating in a misconduct matter. *Id.* at 648. The appropriate inquiry should simply be whether, “under all of the circumstances, including prior knowledge of the case and even a previously held opinion, the judge believes that he or she can be ‘fair-minded’ in his or her participation,” and if so, “recusal is not warranted and the judge should fulfill his or her duty to participate.” *Id.* (internal quotation omitted). Complainant’s unsupported and speculative allegations are insufficient to call into question the propriety of these judges’ decisions.

In summary, complainant’s allegations are “directly related to the merits of a decision or procedural ruling,” and otherwise “lack[] sufficient evidence to raise an

inference that misconduct has occurred.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS Rule 11(c)(1)(B), (D). Accordingly, the complaint must be dismissed as to each of the subject judges. See 28 U.S.C. § 352(b)(1)(A)(ii), (iii).<sup>1</sup>

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<sup>1</sup> Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 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. *Id.* Rule 18(b).