

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-16-90006

A CHARGE OF JUDICIAL MISCONDUCT OR DISABILITY

Before: HENDERSON, *Circuit Judge**

ORDER

Upon consideration of the complaint herein and the supplement thereto, 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. 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 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).

KLH

Karen LeCraft Henderson, Circuit Judge
District of Columbia Circuit

Date: 4/22/2016

* Acting pursuant to Rule 25(f) of the RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS.

MEMORANDUM

The complainant has filed a Judicial Complaint alleging that a judge of the United States District Court for the District of Columbia has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. For the following reasons, complainant's allegations do not warrant action against the subject judge.

The complainant filed a civil lawsuit in the United States District Court for the District of Columbia. The case was assigned to the subject judge, who dismissed the case, denied complainant leave to file amended complaints, and declined to impose sanctions against the complainant.

The misconduct complaint alleges the judge used defamatory and insulting language in the memorandum opinion, and this language suggests that complainant suffers from a mental disability. As explained in the Commentary to Judicial-Conduct Rule 3, however, there is a "special need to protect judges' independence in deciding what to say in an opinion or ruling," and a judge's statement that a claim is legally or factually frivolous is "presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive." As there is no other evidence suggesting an improper motive, the judge's description of the underlying claims is "directly related to the merits" of the case and therefore does not constitute "cognizable misconduct." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 3(h)(3)(A). Accordingly, this part of the judicial misconduct complaint is dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B); see 28 U.S.C. § 352(b)(1)(A)(ii).

The complainant also alleges the judge mischaracterized and misquoted his complaint and erroneously denied him leave to file amended complaints. Because these allegations are “directly related to the merits of a decision or procedural ruling,” this portion of the judicial misconduct complaint must also be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B); see 28 U.S.C. § 352(b)(1)(A)(ii).

Finally, the complainant accuses the judge of having ex parte communications with opposing counsel and engaging in witness tampering. The complainant, however, states that he has no evidence that any ex parte communications occurred, and he provides no evidence that supports the witness tampering claim. Because these portions of the complaint are “based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” the Judicial-Conduct Rules require that they be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D); see 28 U.S.C. § 352(b)(1)(A)(iii).²

² 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 42 days of the date of the dismissal order. *Id.* Rule 18(b).