

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-16-90047

No. DC-16-90048

No. DC-16-90049

No. DC-16-90050

No. DC-16-90051

No. DC-16-90052

No. DC-16-90053

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

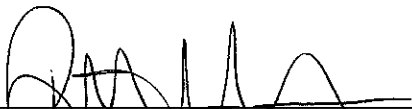
Before: MILLETT, *Circuit Judge**

ORDER

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



Patricia A. Millett, Circuit Judge
District of Columbia Circuit

Date: 1/26/17

* Pursuant to Rule 25(f) of the RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, the Judicial Council has voted to allow Judge Millett to consider this complaint.

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against seven judges of the United States Court of Appeals for the District of Columbia Circuit.¹ The complainant's allegations arise from the subject judges' involvement in the disposition of earlier misconduct complaints. For the following reasons, this misconduct complaint will be dismissed.

In 2013, complainant filed an appeal from a decision of the United States Tax Court. Judges 47, 48, and 49 affirmed the Tax Court decision in an unpublished judgment. Complainant filed a petition for rehearing and rehearing en banc, which was denied. Complainant then filed a judicial complaint against Judge 47, who was the presiding judge of the panel in his Tax Court appeal. The misconduct matter was assigned to Judge 48, who dismissed the complaint, concluding that the allegations were "purely speculative and [did] not remotely constitute evidence of misconduct." Complainant filed a petition for review by the Circuit Judicial Council, whose members included Judges 49, 50, 51, and 52. The petition for review was denied.

Complainant then filed a judicial complaint against Judges 47 to 52. He alleged that because Judges 48 to 52 participated in review of his Tax Court appeal – either as members of the merits panel or as members of the en banc court – they should not have participated in review of the judicial complaint against Judge 47, because such review of Judge 47's conduct amounted to a review of their own conduct. That complaint was assigned to Judge 53, who dismissed it because the allegations were "directly related to the merits of a decision or procedural ruling" or otherwise "lack[ed]

¹ In this memorandum, the subject judges will be identified by the last two digits of the complaint number assigned to each.

sufficient evidence to raise an inference that misconduct has occurred.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B), (D). Complainant filed a petition for review by the Circuit Judicial Council, and the petition was denied.

Complainant has now filed a third judicial misconduct complaint that is similar to the second complaint and alleges that Judges 48 to 53 should not have participated in the prior misconduct matters. Complainant, however, does not present anything that calls into question their decisions to participate in those matters. As the complaint “lack[s] sufficient evidence to raise an inference that misconduct has occurred,” it must be dismissed as to those judges. 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). With respect to Judge 47, this complaint contains no allegations of misconduct against that judge. Complaint No. DC-16-90047 must therefore be dismissed as well.¹

¹ 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).