

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

**In the Matter of
A Complaint of Judicial
Misconduct or Disability**

**Complaint Nos. DC-24-90032
DC-24-90033
DC-24-90034**

Before: Srinivasan, Chief Judge

ORDER

Upon consideration of the complaint herein, filed against three 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.

The Circuit Executive 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 (2019), RULE 11(g)(2).


Sri Srinivasan, Chief Judge

Date: March 28, 2024

No. DC-24-90032
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MEMORANDUM

The complainant has filed a complaint of judicial misconduct against three judges of the United States Court of Appeals for the District of Columbia Circuit. For the following reasons, this misconduct complaint will be dismissed.

The Internal Revenue Code authorizes the Internal Revenue Service (IRS) to pay monetary awards to third- party whistleblowers who supply the IRS with actionable tax violation information. *See* 26 U.S.C. § 7623. The complainant submitted a claim for such an award to the IRS. The IRS Whistleblower Office (WBO) ultimately informed the complainant that it had decided not to pursue the information he had provided.

The complainant then filed a petition with the Tax Court challenging the rejection of his claim. While the petition was pending, this court issued a decision in *Li v. Commissioner of Internal Revenue*, 22 F.4th 1014, 1017 (D.C. Cir), *cert. denied*, 143 S. Ct. 372 (2022), which held that the Tax Court lacks jurisdiction to hear a challenge to the WBO's rejection of a whistleblower's claim in certain circumstances. The Tax Court then directed the Commissioner to file a status report within 14 days after *Li* became final. The complainant filed a notice of appeal of the Tax Court's status report order. The Tax Court proceedings continued while the status report appeal was pending before this court, and the Tax Court directed the complainant to respond to the Commissioner's motion to dismiss. The complainant then appealed that order. The Tax Court

subsequently dismissed the complainant's case on the basis that, under *Li*, subject matter jurisdiction was lacking. The complainant filed an appeal of the Tax Court's final order.

All three of the complainant's appeals have been consolidated. A panel of the court of appeals, composed of the three subject judges, ordered that the complainant's consolidated appeals be held in abeyance pending the court's resolution of two other cases that may have relevance to the complainant's pending appeals.

The complainant has now filed a judicial misconduct complaint against the three subject judges for their handling of his appeals. The complainant alleges that the judges "exhibit[ed] 'criminal' negligence in deciding the clear conclusion of the Court of Appeals," created an unwarranted "four year delay" in the case, "exhibit[ed] signs of old age/criminal negligence. Also, racial profiling a poor, black male; hate crime against a black man", and "for continuing a[n] appeal in the D.C. Circuit Court when the appellant-petitioner has no lawyer/legal representation."

To the extent the complainant challenges the subject judges' decision to hold his case in abeyance or to proceed even though he is unrepresented by counsel, those allegations appear to be a direct challenge to the merits of the judges' order to hold the case in abeyance. "Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge – without more – is merits-related." JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 4(b)(1) Commentary ¶ 12. Such an allegation does not constitute "[c]ognizable misconduct" under the Judicial-Conduct Proceedings Rules or the applicable statute. *Id.*

With respect to the complainant's allegation that the subject judges have improperly delayed ruling on his appeals, "[c]ognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(2). The complainant has not identified delay in a "significant number of unrelated cases," and insofar as he alleges that the subject judges' ostensible delays resulted from an improper motive, the complainant only states generally that the judges "exhibit[ed] signs of old age/criminal negligence. Also, racial profiling a poor, black male; hate crime against a black man." Those unsupported assertions do not present "sufficient evidence to raise an inference that misconduct has occurred." *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D); 28 U.S.C. § 352(b)(1)(A)(iii).

Accordingly, because the complaint is "directly related to the merits of a decision" and is "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred," the complaint will be dismissed. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B) & (D); *see* 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).¹

¹ Pursuant to 28 U.S.C. § 352(c) and JUDICIAL-CONDUCT 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 after the date of the dismissal order. JUDICIAL-CONDUCT PROCEEDINGS RULE 18(b).