

United States Court of Appeals for the Federal Circuit

IN RE COMPLAINT NO. FC-16-90013

Before NEWMAN, *Circuit Judge*.

ORDER AND SUPPORTING MEMORANDUM

The complainant has filed a document indicating that the document is a petition for review of a previous disposition by a judge of this court, but also indicating that it is a complaint against the judge who authored the previous disposition. By separate order, the court has ruled on the petition for review portion of the document. This additional order addresses the document to the extent it is construed as an additional complaint against the judge of this court.

The complainant asserts that the subject judge should have transferred a previous misconduct complaint involving a judge of the Court of Federal Claims to a different court, rather than dismissing it as filed in the wrong court. The complainant also asserts, *inter alia*, improper delay in the previous matter, that the subject judge should not have ruled on the previous complaint, and that the subject judge was protecting another judge.

To the extent the complainant asserts that the previous complaint should have been transferred, complainant is incorrect. Pursuant to Rule 7(a)(2) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, a complaint against a judge of the Court of Federal Claims “must be filed” with the Clerk of the Court of Federal

Claims. The previous complaint was filed with the Federal Circuit instead. Pursuant to the Rules for Judicial-Conduct and Judicial-Disability Proceedings, a complaint “must be dismissed” if it is determined that the complaint is filed in the wrong circuit. Rule 11(c)(1)(F). The rules only allow transfer of a misconduct complaint to another court if the subject judge was sitting by designation in another court, which was not the situation here. Rule 7(b). In any event, because these arguments are related to the merits of the subject judge’s previous ruling, this portion of the new complaint must be dismissed pursuant to Rule 11(c)(1)(B) (a complaint must be dismissed if the complaint is directly related to the merits of a decision or procedural ruling).

Regarding the other allegations, including the assertions of improper delay, that the subject judge should not have ruled on the previous complaint, or that the subject judge was protecting another judge in the previous ruling, we discern no improper delay and determine that the “allegations lack[] sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D).

Accordingly,

IT IS ORDERED THAT:

The complaint is dismissed, as noted above.

July 21, 2016

Date

/s/ Pauline Newman

Pauline Newman
Circuit Judge

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUL 21 2016

PETER R. MARKSTEINER
CLERK

There is a right to file a petition for review of this order. Pursuant to Rule 18(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, any petition for review must be received by the circuit executive within 42 days of the date of the letter transmitting this order. Any petition must be sent to:

Circuit Executive
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439