

United States Court of Appeals for the Federal Circuit

IN RE COMPLAINT NO. FC-19-90002

Before NEWMAN, *Circuit Judge*, the most senior qualified active judge, Rule 25(f).

ORDER AND SUPPORTING MEMORANDUM

The complainant has filed a judicial misconduct complaint concerning a judge of this court and requests that the complaint be transferred out of the court.

In 1986, a panel of three judges of this court, not including the subject judge, affirmed an arbitrator's decision against the complainant. The panel also denied the complainant's motion for relief from judgment and motion for reconsideration of that denial. The complainant attempted to file without leave several other motions, which the clerk of the court properly refused to file. The complainant also filed judicial misconduct complaints against the panel that decided the case and the chief judge at the time. Those complaints were dismissed.

In 2016, the complainant attempted to submit another motion in the same case. The clerk responded with a letter explaining that the case is closed, "[t]he time to file any further briefs or requests has long since expired," "[t]his court has no authority to reopen the case," and new evidence may not be submitted. The letter also stated that "[f]urther filings in this matter will not be filed or considered." The complainant subsequently responded with additional letters to the clerk and the subject judge.

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

MAY 29 2019

PETER R. MARKSTEINER
CLERK

The complainant asserts that the clerk was incorrect in stating that the court is without authority to reopen the case, that the time to file the motion expired, and that the motion included new evidence. The complainant also asserts that, by failing to repudiate that “erroneous information” or otherwise act, the subject judge “is guilty of condoning the communication of false information to a litigant,” violated the judge’s oath taken pursuant to 28 U.S.C. § 453 to “impartially discharge and perform all the duties incumbent upon [the judge],” and obstructed justice.

We discern no impropriety in the subject judge’s lack of response to the complainant’s letters. It is clear that the complainant’s case was closed, and the complainant was informed that further filings would not be filed or considered. Regarding the other allegations, including the assertions that the subject judge violated the judge’s oath and obstructed justice, those “allegations lack[] sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The complainant also argues that “every other judge of [this] court is guilty of the same misconduct” and requests that the complaint be transferred for review “by parties outside [this court].” However, the rules require that a complaint against a judge of this court “must be filed” with the circuit executive of this court. Rule 7(a)(3). And while the rules allow the transfer of a complaint to another circuit, the complainant has not shown the “exceptional circumstances” necessary to warrant transfer. Rule 26.

Accordingly,

IT IS ORDERED THAT:

The complaint is dismissed.

May 29, 2019
Date

/s/ Pauline Newman
Pauline Newman
Circuit Judge

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 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