

United States Court of Appeals for the Federal Circuit

IN RE COMPLAINT NO. FC-20-90029

Before PROST, *Chief Judge*.

ORDER AND SUPPORTING MEMORANDUM

The complainant alleges that a judge of this court should have recused in a prior case brought by the complainant and other air traffic controllers seeking to recover lost pay. Specifically, the complainant appears to allege that the judge's spouse had a financial interest in the case as a result of being an attorney at a law firm that has represented the National Air Traffic Controllers Association (NATCA) in other matters. The complainant's allegations are premised on the notion that NATCA's refusal to represent the plaintiffs in the prior suit was due to a conflict of interest. While difficult to follow, the complainant appears to assert that, had the plaintiffs won their case, NATCA's conflict would have been exposed, likely resulting in NATCA's decertification, one less client for the law firm, and thus possible reduction of income for the judge's spouse.

Because allegations concerning a failure to recuse are merits-related, they are not the proper subject of a judicial misconduct complaint. See Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Cognizable misconduct does not include . . . a failure to recuse."); Rule 11(c)(1)(B) (requiring dismissal of a complaint that "is directly related to the merits of a decision or procedural ruling"); see also *In re Judicial Misconduct*,

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PETER R. MARKSTEINER
CLERK

756 F.3d 1143, 1144 (9th Cir. 2014) (“Allegations that a judge erred in failing to recuse are merits-related and must be dismissed.”). Although an allegation that a judge knew of a conflict and failed to recuse may be a viable claim of judicial misconduct, *see In re Judicial Misconduct*, 756 F.3d at 1144 (citing *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 146 (2006)), there is no indication that any alleged conflict was ever brought to the judge’s attention. There is also no allegation that the judge was aware of the alleged conflict at the time he considered the prior appeal. Indeed, the firm in question did not represent any party in those prior proceedings, and there is no allegation that the firm was representing NATCA in any capacity at the time that prior appeal was before the court. Because there is no “evidence to raise an inference that misconduct has occurred” here, Rule 11(c)(1)(D), the complaint must be dismissed.

Accordingly,

IT IS ORDERED THAT:

The complaint is dismissed.

May 27, 2020
Date

/s/ Sharon Prost
Sharon Prost
Chief 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