

United States Court of Appeals for the Federal Circuit

IN RE COMPLAINT NOS. FC-21-90006, FC-21-90007,
FC-21-90008, FC-21-90009, FC-21-90010, FC-21-90011,
FC-21-90012, FC-21-90013, FC-21-90014, FC-21-90015,
FC-21-90016, AND FC-21-90017

Before PROST, *Chief Judge*.

ORDER AND SUPPORTING MEMORANDUM

The complainant appealed an adverse decision from the Merit Systems Protection Board to this court. A panel of two active judges and one senior judge of this court affirmed that decision. The complainant then petitioned for en banc rehearing, which was denied by eleven participating active judges. Unhappy with those results, the complainant now brings a judicial misconduct complaint against all twelve judges involved in those rulings.*

Because I am one of judges named in this complaint, I would ordinarily recuse from ruling on the matter. However, where, as here, all regular active circuit judges are disqualified, the court “may determine whether to request a transfer [to another circuit] under Rule 26, or, in the interest of sound judicial administration, to permit the

* To the extent the complainant asserts wrongdoing by other individuals not covered by the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the court does not accept any complaint against those individuals. See Rule 8(d) (providing that the court may only accept a complaint against a person covered by the rules).

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THE FEDERAL CIRCUIT

MAR 05 2021

PETER R. MARKSTEINER
CLERK

chief judge to dispose of the complaint on the merits.” Rule 25(f). Pursuant to that rule, the court directed me to decide the merits of these complaints.

The complainant here alleges that the twelve subject judges are “guilty of conspiracy . . . to cover up the fact that judges below them were in the absence of complete jurisdiction to issu[e] any order due to the [fact] this concerns a mix[ed] case.” These claims clearly relate directly to the merits of the judges’ rulings and must therefore be dismissed. *See* Rule 11(c)(1)(B).

The complainant also alleges that the judges are “guilty of conspiracy with other courts to deny an American the protections of the Constitution and stare decisis [and] the Rule of Law.” To the extent that he alleges anything beyond a claim relating to the merits of the prior rulings, the allegations lack sufficient evidence to raise an inference of misconduct, as adverse rulings alone do not constitute proof of a conspiracy. Thus, these charges must also be dismissed. *See* Rule 11(c)(1)(D).

Accordingly,

IT IS ORDERED THAT:

The complaints are dismissed.

March 5, 2021

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

3 IN RE COMPLAINT NOS. FC-21-90006, -90007, -90008, -90009,
-90010, -90011, -90012, -90013, -90014, -90015, -90016,
-90017

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