

2777 Alvarado Str, Suite C
San Leandro, CA 94577

May 27, 2008

Clerk of the Court
United States Court of Appeals for the Ninth Circuit
P. O. Box 193939
San Francisco, CA 94119-3939

Re: Complaint of Judicial Misconduct No. 07-89146 and 08-89033

Dear Clerk of the Court,

I hereby petition the Judicial Council for review of chief judge's order (the "Order") dismissing the two complaints (No. 07-89146 and 08-89033) filed pursuant to the Judicial Conduct and Disability Act (the "Act").

Complaint No. 07-89146 (the "07 Complaint") was mailed on November 21, 2007. It was received at the Ninth Circuit on November 23, 2007, but it was not docketed until December 17, 2007. Complaint No. 08-89033 was filed in March 2008. Five months after the 07 complaint was filed, in April 2008, the subject judge resigned from the federal bench and was appointed as a justice in state appellate court. Since the misconduct complaints were filed before the adoption of the new rules on April 10, 2008, the previous rules are the governing standards.

The grounds for the petition are given below.

1. The complaints are not moot because remedial action is still available without the participation of the subject judge

The Order dismissed the two complaints on the ground that the subject judge became a "former judge" and "the complaints are moot."

But, I am still being harmed by the past conduct of the subject judge, and the judicial council can take remedial actions without his participation.

For instance, the subject judge ordered that I could not represent myself in the *Netbula v. SUN* case (C06-07391) and must “cease and desist” from filing papers and I would be “taken out” if I don’t be quiet in court. That “cease and desist” order and “be quiet” order is still effective (for that particular case) despite the subject judge’s resignation from the federal judiciary. Since I cannot challenge the “cease and desist” order in the district court without first violating it – even though I believe that order was unlawful, the only legal remedy available to me is from the judicial council, which has the authority under 28 U.S.C. § 354 (a) to take remedial action to redress the harm.

For another example, I alleged that the judge retaliated against me due to a blog article I wrote. An investigation can ascertain the truth of this allegation, which can then be ground for my motion to vacate the judge’s various orders, including a final judgment against me in a copyright case.

2. Public interest in justice requires an investigation

The word “may” in the Act indicates that investigation of the alleged conduct is permissible, even though the judge resigned during the complaint process.

The case cited in the Order, 91 F.3d 90, deals with a situation where a special committee has been already appointed and an investigation has been conducted. In this case, no investigation has been conducted to ascertain the facts despite the serious allegations made in the complaints many months ago. To be fair to both the complainant and the subject judge, an investigation should be conducted.

For instance, I heard the following from an attorney during a settlement conference: that a blog article I wrote blew my case --- indicating that the judge’s ruling was part of a personal vendetta. Whether the court is used for personal revenge is a serious question that merits an investigation.

3. The Chief Judge should have identified additional complaints

In the 07 complaint, the story told by the attorney was that the blog article offended “some of the judges, including Judge Jenkins”. The allegation that some judges were communicating about an extra-judicial blog that was completely unrelated to the merits of any case raises serious questions.

The Chief Judge, based on the allegations of the complaint, could have identified additional complaints.

I am prejudiced, because I know that my blog offended not only the subject judge but also some other judges. An investigation could establish the identities of these judges, so I can seek recusal of these judges in the event that my case is assigned to them.

4. Complainant is entitled to a judgment as a matter of law on undisputed issues

I filed the first complaint in November 2007. Most of the facts are taken from the hearing transcripts and other court records, such as the judge's rulings. They are undisputed. For instance, the judge ordered that complainant could not "represent himself" and must not file papers or speak in court and threatened to have complainant taken out if he does not be quiet. The alleged *ex parte* order was *ex parte* on its face. The coaching of opposing counsel was in the transcript. To this day, the motions I filed in the district court are still sitting there, without being ever heard, while the motions filed by opposing counsel were granted instantly...

These facts establish text-book misconduct. Violations of due process will inevitably lead to protracted proceedings in the courts. Thus, the conduct by the judge is prejudicial to the effective and expeditious administration of the business of the courts.

Complainant is entitled to a determination on such undisputed issues and entitled to remedies allowed by the Act.

5. The complaints are not moot because the Act is forward-looking

Although the subject judge resigned from the federal judiciary and has been appointed as a Justice in state court, there is strong indication that he may return to the federal bench. The Act serves the purpose of assuring effective and expeditious administration of the business of the federal courts. In this respect, the Act is "generally forward-looking". An investigation of the alleged conduct and a legal determination on whether such conduct constitutes judicial misconduct helps setting the boundaries of permissible behavior and assure the effective and expeditious administration of the business of the courts in the future.

6. The Dismissal Order did not set forth the allegations of the complaint as required by Rule 4(f)(1)

Former Rule 4(f)(1) OF THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT OR DISABILITY states the following:

If the complaint is dismissed or the proceeding concluded on the basis of corrective action taken, the chief judge will set forth either in the order or in a supporting memorandum the allegations of the complaint and the reasons for the disposition...

Ninth Circuit Rules on Judicial Misconduct and Disability (May 25, 2004), p.12.

However, the Order did not “set forth ... the allegations of the complaint” at all. It merely stated that complainant filed two complaints against a former district judge.

CONCLUSION

For the foregoing reasons, I respectfully petition the Judicial Council for a review of the chief judge’s order of dismissal. In the alternative, I request that the Judicial Council certify my complaints for review by the Judicial Conference of the United States.

Sincerely,



Dongxiao Yue

Attached: 10 copies of complaints No. 07-89146 and 08-89033.