

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In the Matter of

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY,

No. TC-16-90002


ORDER

The Court received a complaint, and supplement thereto, alleging that a judge of the United States Tax Court engaged in judicial misconduct.¹ Upon due consideration, it is

ORDERED that the complaint is dismissed for the reasons stated in the attached Memorandum.

The Clerk of the Court is directed to send copies of this Order to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability. Rule 11(g)(2), Rules for Judicial Conduct and Disability Proceedings for the United States Tax Court.

The complainant and the subject judge have the right to petition the Judicial Conduct and Disability Council to review this order. USTC Rules for Judicial Conduct, Rule 11(g)(3). The deadline for filing such a petition is within forty-two (42) days after the date of the Chief Judge's order, and the timely mailing/timely filing provision of 26 U.S.C. sec. 7502 does not apply. USTC Rules for Judicial Conduct, Rule 18(a), (b).


L. Paige Marvel
Chief Judge

Dated: Washington, DC
June 1, 2017

¹ The Rules for Judicial Conduct and Disability Proceedings for the United States Tax Court (USTC Rules for Judicial Conduct) require the Chief Judge's decision to be publicly available, but the identities of the judge and the complainant are protected if the complaint is finally dismissed under Rule 11(c). USTC Rules for Judicial Conduct, Rule 24. Accordingly, the Court will not identify the parties in this matter, nor describe the context in which the complainant's grievances arose with any degree of specificity.

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MEMORANDUM

MARVEL, Chief Judge: Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a judge of the United States Tax Court. For the following reasons, the complaint will be dismissed.

After parsing through complainant's lengthy submission, it appears that complainant's primary contentions are that the judge presiding over the underlying Tax Court case exceeded the powers of an Article I judge and did not afford complainant due process. Complainant raises concerns regarding the contents of an order that the judge issued in his case that provided him with representation options under Rule 60 of the Tax Court Rules of Practice and Procedure. It appears that complainant believes that the judge erroneously made determinations about his competence. Complainant also asserts that the judge issued the order in retaliation for complainant submitting a complaint about the judge before the order was issued.

A review of the case record in the underlying case shows that complainant raised concerns about adequate response times. The judge's actions on the record in the underlying case demonstrate that careful consideration was given to those concerns. By order issued in the case, the judge also provided complainant with an opportunity to have someone other than a person admitted to the Tax Court bar

represent him in the Tax Court case, recognizing that petitioner was not someone who would normally be afforded that opportunity under the Tax Court Rules of Practice and Procedure. Rule 60(d), Tax Court Rules of Practice and Procedure, allows a general guardian, committee, conservator, or other like fiduciary to bring or defend a case in the Tax Court on behalf of an infant or incompetent person. An incompetent person who does not have a duly appointed legal representative may act by a “next friend”. See Campos v. Commissioner, T.C. Memo. 2003-193. In an order issued in the case, the judge outlined the requirements under Campos for a “next friend” to represent a taxpayer before the Court. Contrary to complainant’s apparent assertions, the record does not show that the judge made any determination about complainant’s competence. The record shows that the judge simply presented complainant with an opportunity to avail himself of another means to have assistance with prosecuting his case.

Cognizable misconduct does not include allegations that are directly related to the merits of a decision or procedural ruling, and a complaint must be dismissed in whole or in part when the Chief Judge concludes this is so. USTC Rules for Judicial Conduct, Rules 3(i)(3)(A) and 11(c)(1)(B). The assertions raised that the judge acted beyond his authority through orders issued in the underlying case are directly related

to the merits of a decision or procedural ruling, and so the complaint must be dismissed. See id.

A complaint must be dismissed to the extent the Chief Judge concludes that the complaint is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred. USTC Rules for Judicial Conduct, Rule 11(c)(1)(D). The record does not show that the judge made any determination with respect to complainant's competence. Thus, the apparent assertions that the judge exceeded his authority and that complainant was not afforded due process are unsupported. Further, there is nothing in the record that shows the judge retaliated against complainant.