

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In the Matter of

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY,

No. TC-16-90003

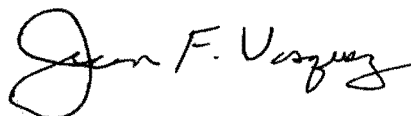
ORDER

The Court received a complaint alleging that a judge and a special trial 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 judges, 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 judges 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).



Juan F. Vasquez
Judge²

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) of the USTC Rules for Judicial Conduct. 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.

² Judge Vasquez has been delegated to act as the Chief Judge for purposes of addressing this complaint of judicial misconduct.

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MEMORANDUM

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

Complainant alleges that the special trial judge who issued orders in the underlying Tax Court case should have recused himself from complainant's proceeding because the judge was previously employed by the Internal Revenue Service. When a judge has previously worked in the executive branch of the Federal government, recusal is required based on a "personal participation" rule – that is, where the judge, in his former position, "participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." 28 U.S.C. sec. 455(b)(3); see also Baker & Hostetler LLP v. U.S. Dept. of Commerce, 471 F.3d 1355, 1357-1358 (D.C. Cir. 2006) (holding where a decision of the executive branch was under review, the Federal judge's recusal was not required based on his executive branch service because he had taken no part in nor expressed opinions concerning the merits of the case at issue). The U.S. Tax Court special trial judge in the underlying Tax Court case has not been an employee of the Internal Revenue Service (I.R.S.) for many years and thus had no involvement in complainant's I.R.S. proceeding. Allegations that a judge failed to recuse are subject to dismissal because they pertain to the merits

of a decision or procedural ruling. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” USTC Rules for Judicial Conduct, Rule 3(i)(3)(A). Complainant offers no evidence that the judge failed to recuse for an improper purpose, so this charge must be dismissed as merits-related. USTC Rules for Judicial Conduct, Rules 3(i)(3)(A), 11(c)(1)(B).

Complainant also alleges that the special trial judge and another judge failed to address issues and assertions made in the underlying U.S. Tax Court case and made “false statements” in orders, demonstrating bias in handling his case. Complainant did not include, nor does the underlying case record provide, any evidence supporting the allegation of bias.

Complainant also alleges that the special trial judge “did not comply with decisional law when he dismissed my case for failure to state a claim”. These allegations relate directly to the merits of the judges’ rulings and must be dismissed. See USTC Rules for Judicial Conduct, Rules 3(i)(3)(A) and 11(c)(1)(B).