



United States Tax Court
WASHINGTON, DC 20217

In the Matter of

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY,

No. TC-24-90001

ORDER OF PARTIAL DISMISSAL

On January 22, 2024, the Court received a complaint alleging that a judge of the United States Tax Court engaged in judicial misconduct. By letter dated January 31, 2024, the Court acknowledged receipt of the complaint.

After reviewing a complaint, the Chief Judge must determine whether it should be: (1) dismissed, (2) concluded on the ground that voluntary corrective action has been taken, (3) concluded because intervening events have made action on the complaint no longer necessary, or (4) referred to a special committee, Rule 11(a), Rules for Judicial Conduct and Disability Proceedings for the United States Tax Court (USTC Rules for Judicial Conduct).

Upon due consideration, and for cause, it is

ORDERED that the allegations of bias and prejudice in the complaint and complainants' request that the subject judge be recused are dismissed for the reasons stated in the attached Memorandum. The allegation of ex parte communication in the complaint will be addressed under separate order.

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), USTC Rules for Judicial Conduct.¹

¹ The USTC Rules for Judicial Conduct require the Chief Judge's decision to be publicly available, but the identities of the subject judge and the Complainants are protected if the complaint is finally dismissed under Rule 11(c). Rule 24, USTC Rules for Judicial Conduct. 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.

Served 03/22/24

No. TC-24-90001

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

(Signed) Kathleen Kerrigan
Chief Judge

MEMORANDUM

KERRIGAN, *Chief Judge*: Complainants have filed a complaint relating to judicial conduct against a judge of the United States Tax Court. For the following reasons, the complaint will be dismissed.

Complainants allege that the judge presiding over Complainants' underlying Tax Court case appeared to make rulings in favor of the opposing party erroneously and that the judge was prejudiced against Complainants and engaged in *ex parte* questioning of Respondent during a break in trial.

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. Rules 3(i)(3)(A) and 11(c)(1)(B), USTC Rules for Judicial Conduct. Dismissal is therefore appropriate because the allegations of bias and prejudice are directly related to the merits and because they are insufficient to raise an inference of impermissible bias. Rule 11(c)(1)(D), USTC Rules for Judicial Conduct; *see In re Complaint of Judicial Misconduct*, 583 F.3d 598, 598 (9th Cir. 2009) (Adverse rulings do not prove bias).

Moreover, a cognizable claim of misconduct does not include a judge's failure to recuse. Rule 3(h)(3)(A). Therefore, Complainants' allegation of failure to recuse must also be dismissed. Rule 11(c)(1)(B); *see In re Complaint of Judicial Misconduct*, 570 F.3d 1144, 1144 (9th Cir. 2009) (Allegations of recusal relate directly to the merits of a judge's rulings and must be dismissed.).

The complaint's allegations of bias and prejudice and complainants' request for recusal are dismissed.