

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In the Matter of

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY,

No. TC-16-90004

ORDER

The Court received a complaint 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 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.

In the judicial misconduct complaint, complainant appears to allege that the judge in the underlying Tax Court cases failed to afford her due process by denying leave to seek counsel before a hearing date, by terminating a hearing before she was done presenting information, by excluding exhibits from the record, and ignoring issues that complainant raised in Court filings. Complainant states that she feels like she has not been heard. Complainant attached documents to this complaint that she states the judge “removed from the record”. Complaint generally asserts that actions taken by the subject judge qualify as misconduct “as they would cause a substantial and widespread lowering of confidence in the U.S. Tax Court among reasonable people.”

Cognizable misconduct is (1) conduct prejudicial to the effective and expeditious administration of the business of the Tax Court and (2) conduct occurring outside the performance of official duties if the conduct might have a prejudicial effect on the administration of the business of the Tax Court, including a

substantial and widespread lowering of public confidence in the Tax Court among reasonable people. United States Tax Court Rules for Judicial Conduct, Rule 3(i).

Complainant raises concerns about an attorney who represented her in one of the underlying Tax Court cases. A complaint under the USTC Rules for Judicial Conduct may concern the actions or capacity only of judges and special trial judges of the Tax Court. USTC Rules for Judicial Conduct, Rule 4. Accordingly, this proceeding addresses only allegations concerning the subject Tax Court judge.

Complainant's allegations do not address the judge's conduct occurring outside the performance of official duties. Complainant broadly asserts that the judge did not afford her an opportunity to be heard in her underlying cases. Complainant also alleges that the judge acted improperly by denying her an opportunity to seek counsel before a scheduled hearing.

A review of the records in the underlying Tax Court cases show that complainant filed a motion for continuance five days before the scheduled hearing, which was denied. Complainant was afforded an opportunity to file a brief after the hearing and during the proceeding an attorney did enter an appearance on complainant's behalf in one of the underlying cases.

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 in the complaint are directly related to the merits of a decision or procedural ruling and the complaint must be dismissed. See id.

Complainant's broad assertion that the judge's actions qualify as misconduct because they "would cause a substantial and widespread lowering of confidence in the U.S. Tax Court among reasonable people" is not supported. To the extent the Chief Judge concludes the complaint is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred, a complaint must be dismissed in whole or in part. USTC Rules for Judicial Conduct, Rule 11(c)(1)(D).