

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

C.C.D. No. 18-03

IN RE: COMPLAINT UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT

PROCEEDING IN REVIEW OF THE ORDER
OF THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT
J.C. Nos. 05-19-90049, 50, 51

MEMORANDUM OF DECISION

(Filed March 31, 2020)

Present: Judges Anthony J. Scirica, Chair, Sarah Evans Barker, Joel F. Dubina, Joel M. Flaum, Thomas F. Hogan, James E. Gritzner, and Jon O. Newman.

MEMORANDUM OF DECISION

This matter is before the Judicial Conduct and Disability Committee on a petition for review filed by Complainant, a former judicial employee. Complainant seeks review of a November 15, 2018, order of the Judicial Council of the Fifth Circuit, dismissing Complainant's judicial misconduct complaint (including two amendments/supplements) against three judges under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–64, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings ("JC&D Rules").

The Judicial Conduct and Disability Committee reviews Complainant's petition for review under 28 U.S.C. § 357 and JC&D Rules 21(a) and 21(b)(1)(A). For the reasons we explain, we deny Complainant's petition for review and affirm the Circuit Judicial Council's order.

I.

Complainant alleges that the Subject Judges covered up the sexual misconduct of a former judicial employee, that the Subject Judges discriminated and retaliated against Complainant by firing Complainant, and that the Subject Judges violated Complainant's due process rights in processing a related Employment Dispute Resolution complaint, including by one Subject Judge's failure to recuse from the Employment Dispute Resolution proceeding. Complainant filed an additional Employment Dispute Resolution claim, alleging that one of the Subject Judges and various judicial employees violated Complainant's rights by willfully failing to advise Complainant of the addition of a whistleblower provision in the court's Employment Dispute Resolution Plan and failing to provide access to a court order implementing the revision to the Plan.¹

The Circuit Chief Judge appointed a Special Committee, which retained outside counsel to investigate the allegations and report findings and recommendations to the Circuit Judicial Council. 28 U.S.C. § 353(c); JC&D R. 11(f). The Special Committee, with the assistance of outside counsel, conducted a thorough investigation that included the review of over 500 pages of documents and interviews with 16 witnesses, including Complainant and the Subject Judges.

The Special Committee found no evidence supporting Complainant's allegations that the Subject Judges covered up the sexual misconduct of a former judicial employee, no evidence that Complainant was fired for any reason other than Complainant's own falsification of Complainant's time records, and no evidence that Complainant's rights under the Employment Dispute Resolution

¹ Following referral of Complainant's additional Employment Dispute Resolution complaint to the Fifth Circuit for handling pursuant to the Employment Dispute Resolution Plan provisions, the Circuit Chief Judge held that complaint in abeyance pending resolution of this judicial misconduct proceeding.

Plan were violated. The Special Committee also found no evidence that the whistleblower provision in the court’s current Employment Dispute Resolution Plan would have applied to Complainant and Complainant’s claims, no evidence that any judge or court employee “fraudulently concealed” the addition of the provision, and no evidence that any judicial employee “willfully obstruct[ed] justice” by refusing to provide Complainant with a copy of the order enacting the revised Plan (because no such order exists).

Pursuant to these findings, the Special Committee recommended that the Circuit Judicial Council dismiss the judicial misconduct complaint because the facts on which the complaint was based had not been established. JC&D R. 20(b)(1)(A)(iii).² The Special Committee also recommended that the Judicial Council dismiss Complainant’s Employment Dispute Resolution complaint under 28 U.S.C. § 332(d)(1), which provides that “[e]ach judicial council shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit.”

The Circuit Judicial Council accepted the Special Committee’s recommendations, dismissing the judicial misconduct complaint primarily due to a lack of substantiating evidence. JC&D R. 20(b)(1)(A)(iii).³ The Judicial Council also took Complainant’s Employment Dispute Resolution complaint out of abeyance and dismissed it under 28 U.S.C. § 332(d)(1), noting there is no appeal from this dismissal.

² The Special Committee also recommended dismissal of the complaint as related to the merits of a judicial decision with regard to one Subject Judge’s decision not to recuse from Complainant’s Employment Dispute Resolution proceeding. JC&D R. 20(b)(1)(A)(ii).

³ The Judicial Council dismissed the complaint as related to the merits of a judicial decision with regard to one Subject Judge’s decision not to recuse from Complainant’s Employment Dispute Resolution proceeding. JC&D R. 20(b)(1)(A)(ii).

II.

We review circuit judicial council orders in judicial conduct and disability matters for errors of law, clear errors of fact, or abuse of discretion. JC&D R. 21(a); *see also In re Complaint of Judicial Misconduct*, 664 F.3d 332, 334–35 (U.S. Jud. Conf. 2011) (deferring to findings of circuit judicial council and overturning them only if clearly erroneous). Our review necessarily depends on the record before us and gives deference to the circuit judicial council’s consideration of the special committee’s review of the evidence. *See In re Mem. of Decision of Jud. Conference Comm. on Jud. Conduct & Disability*, 517 F.3d 563, 569 (U.S. Jud. Conf. 2008) (“[W]e will defer to the findings of the Judicial Council and the special committee, and will overturn those findings only if, upon examination of the record, they are clearly erroneous.”).

Complainant argues in their petition for review that the Circuit Judicial Council should not have dismissed the complaint due to a lack of substantiating evidence and provides “facts with some additional supporting evidence to show that the facts to establish [the] complaint were clearly met.” The Special Committee conducted a thorough investigation that, as noted above, included the review of over 500 pages of documents and interviews with 16 witnesses, including Complainant and the Subject Judges. Complainant had several opportunities to present evidence and did so at various stages of the proceeding. Complainant’s argument in this petition for review is merely an attempt to re-hash Complainant’s prior arguments. The Circuit Judicial Council and the Special Committee weighed all the evidence in considering Complainant’s allegations, and we find no clear error.⁴

⁴ Complainant also challenges the Circuit Judicial Council’s dismissal of the judicial misconduct complaint as merits-related under JC&D R. 20(b)(1)(A)(ii). The part of the complaint dismissed on this ground relates to Complainant’s argument that a Subject Judge should have recused from Complainant’s Employment Dispute Resolution proceeding. Such an allegation is merits-related, and we find no error by the Judicial Council. *See* Commentary on JC&D R. 4 (“[A]ny allegation

III.

For these reasons, we deny Complainant's petition for review and affirm the Circuit Judicial Council's order.

that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related. The phrase 'decision or procedural ruling' is not limited to rulings issued in deciding Article III cases or controversies[, but also includes a] judge's administrative determination The existence of an appellate remedy is usually irrelevant to whether an allegation is merits-related. The merits-related ground for dismissal exists to protect judges' independence in making rulings, not to protect or promote the appellate process. A complaint alleging an incorrect ruling is merits-related even though the complainant has no recourse from that ruling.”).