

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90018

**A Charge of Judicial
Misconduct or Disability**

Before: SENTELLE, Chief Judge of the Circuit

ORDER

Upon consideration of the complaint herein filed against a Judge of the United States District Court for the District of Columbia pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 and the Judicial Conference of the United States Rules for Judicial-Conduct and Judicial-Disability Proceedings, it is

ORDERED, for the reasons stated in the attached Memorandum, that the complaint be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii) & (iii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 3(h)(3)(b) & 11(c)(1)(B) & (D).

The Clerk is directed to send copies of this Order and accompanying Memorandum to complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability. See 28 U.S.C. § 352(b); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(g)(2).



David B. Sentelle, Chief Judge
District of Columbia Circuit

Date: 8/7/12

MEMORANDUM

Complainant alleges that a Judge from the United States District Court for the District of Columbia has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, complainant alleges that the subject judge has “engaged in a continuing series of acts that has placed a serious taint on his ability to be a neutral administrator of justice in any case.”

Complainant asserts that the subject judge acted improperly in two cases unrelated to complainant’s underlying case and that the subject judge has failed to act on pending matters in complainant’s underlying case in a timely manner. Complainant’s allegations, however, do not provide any grounds for action against the subject judge.

Complainant’s allegation that the subject judge has failed to take any action on pending motions in complainant’s underlying case for six years is not cognizable misconduct. Complainant does not allege an “improper motive in delaying a decision” nor has complainant demonstrated “habitual delay in a significant number of unrelated cases.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 3(h)(3)(B) (allegations of delay may only be considered as cognizable misconduct if “the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.”). Thus, the allegation of delay in this “single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge – in other words, assigning a low priority to deciding the particular case.” *Id.* at Rule 3 Commentary. Accordingly, the complaint must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii) (providing for dismissal of a complaint that is “directly related to the

merits of a decision or procedural ruling”); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B) (“A complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint . . . is directly related to the merits of a decision or procedural ruling.”). Although complainant’s motion for retroactive application of sentencing guidelines has been long pending, complainant’s case has now been reactivated and is once again moving towards resolution. Complainant’s new counsel has filed a motion for reduction of sentence and a motion to vacate. After the government responds to the motions, this court is confident that the subject judge will be able to resolve all pending matters promptly.

Complainant also argues that the subject judge acted improperly in two cases unrelated to complainant’s case. Even assuming there was misconduct in those cases, complainant has failed to provide any evidence to demonstrate that the subject judge’s actions in those cases are in any way related to the subject judge’s actions in complainant’s underlying case. Thus, this allegation lacks any specific evidence to raise an inference that misconduct has occurred and must be dismissed. See U.S.C. 352(b)(1)(A)(iii) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D).

Thus, because the allegation is directly related to the merits of complainant's underlying case or lacks sufficient evidence to raise an inference that misconduct has occurred, the complaint must be dismissed.¹

¹ Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 18(a), complainant may file a petition for review by the Judicial Council for the District of Columbia Circuit. Any petition must be filed in the Office of the Clerk of the Court of Appeals within 35 days of the date of the Clerk's letter transmitting the dismissal Order and this Memorandum. *Id.* R. 18(b).