

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90046

**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); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B).

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: 11/26/12

MEMORANDUM

Complainant alleges that a judge from the United States District Court 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 indulged defendants' failure to follow the rules of the court. Complainant asserts that the subject judge gave the defendants additional time beyond the time sought in their motion for extension of time, has failed to act on the motion for preliminary injunction, and granted leave to file a motion to vacate the default judgment even though defendants still have not filed an answer to the complaint. Complainant's allegations, however, do not provide any grounds for action against the subject judge.

Complainant's challenges appear to be direct challenges to the substance of the subject judge's orders granting the extension of time and the motion to vacate the default judgment. The appropriate avenue to obtain relief from the alleged erroneous rulings, however, is not a judicial misconduct proceeding. 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.").

To the extent complainant is arguing that the subject judge has failed to resolve the motion for a preliminary injunction or rule on the amended complaint in a timely manner, these allegations are 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."). Because complainant's underlying case is still pending before the subject judge, the appropriate avenue to obtain relief would be to file a petition for writ of mandamus with the United States Court of Appeals for the D.C. Circuit. It should be noted, however, that complainant's case has just been referred to mediation and thus it appears that the case is proceeding.

Because complainant's allegations are directly related to the merits of the subject judge's decisions, 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).