

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90001

**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:

2/11/2013

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 failed to take action in a timely manner on two reports and recommendations filed by a special master. Complainant's allegations, however, do not provide any grounds for action against the subject judge.

To the extent complainant is arguing that the subject judge has failed to take action on the special master's reports and recommendations, these allegations are not cognizable misconduct. Complaints of delay will only be considered as cognizable misconduct if the complaint includes allegations of an "improper motive in delaying a decision" or if the 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). In this case complainant has not alleged habitual delay but instead attributes an improper motive to the subject judge's actions. Complainant asserts that the subject judge's "deliberate" failure to issue an order "evidences a determination not to rule on any of [the party's] matters – likely in the hope [the party] will feel pressured to settle its dispute with [the opposing party] for *de minimus* value." This allegation, however, is pure speculation. Complainant has simply attributed an improper motive to the subject judge's actions while failing to provide *any* evidence of that alleged improper motive. Thus, because complainant has failed to sufficiently allege an improper motive, 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."). The court is confident that the subject judge will consider the two pending reports and recommendations in due course.

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).