

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90027

A Charge of Judicial Misconduct or Disability

Before: GARLAND, 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 11(c)(1)(B) & (D).

The Clerk is directed to send copies of this Order and accompanying Memorandum to the 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).



Merrick B. Garland, Chief Judge
District of Columbia Circuit

Date: 9/26/13

MEMORANDUM

The complainant alleges that a Judge of the United States District Court for the District of Columbia engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, the complainant alleges that the subject judge treated him in a hostile way by referring to prejudicial facts that were irrelevant to the issues in the case, and that the judge delayed ruling on his case. For the following reasons, these allegations do not warrant action against the subject judge.

The complainant sought injunctive and declaratory relief under the Administrative Procedure Act alleging that the defendants violated 10 U.S.C. § 1552 (allowing corrections to military records to “correct an error or remove an injustice” to be made by the “Secretary acting through boards of civilians of the executive part of th[e applicable] military department”) by “confer[ring] adjudicatory power on staff members who work for, but are not members of [the Board]” and allowing them “to evaluate reconsideration requests submitted by veterans and active [duty] members of the Navy and Marine Corps.” The subject judge granted the defendants’ motion to dismiss, finding that the case was barred by the controlling statute of limitations and thus the court lacked subject matter jurisdiction to consider it. The complainant then filed a motion for a new trial pursuant to Rule 59. Finding that the complainant had not demonstrated that the court committed clear error in granting the motion to dismiss, the judge denied the

motion for a new trial. The complainant subsequently filed a notice of appeal, which is pending.

The complainant then filed the instant judicial misconduct complaint against the subject judge, alleging that the judge had treated him in a hostile manner. Specifically, the complainant notes that the judge's memorandum opinion referred to the fact that a general court martial had found the complainant guilty of assault with a deadly weapon and other charges. The complainant asserts that, because these facts were not at issue in the case, the subject judge created "a bias[ed] opinion in the mind of the reader."

Although the subject judge did note – quoting from the defendant's own memorandum – that a court martial had found the complainant guilty of assault and other charges, the judge went on to state that the complainant's court martial conviction was reversed and that his bad conduct discharge was administratively changed to a general discharge.

Because the judge merely recited the background facts of the case pertaining to the complainant's military record, which was itself at issue, the complainant has not provided any specific evidence of wrongdoing on the part of the subject judge. This allegation therefore lacks sufficient evidence to raise an inference that judicial misconduct has occurred. *See* U.S.C. § 352(b)(1)(A)(iii); Jud. Conf. U.S., Rules for Judicial-Conduct and Judicial-Disability Proceedings 11(c)(1)(D).

The complainant's allegation of delay is also without merit. An "allegation about delay in rendering a decision" does not constitute cognizable misconduct "unless the

allegation concerns an improper motive in delaying a particular decision” or “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, the complainant fails to attribute an improper motive to the subject judge’s delay.

Accordingly, 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. The complaint of judicial misconduct based on improper delay must therefore 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 the complainant's allegations lack sufficient evidence to raise an inference that misconduct has occurred or are directly related to the merits of the subject judge's decision, 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), the 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).