

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**In the Matter of**

**Judicial Council Complaint No. DC-15-90011**

**No. DC-15-90012**

**No. DC-15-90013**

**No. DC-15-90014**

**No. DC-15-90015**

**A Charge of Judicial  
Misconduct or Disability**

Before: GARLAND, *Chief Judge*.

## **ORDER**

Upon consideration of the complaints described herein, filed against a judge of the United States District Court for the District of Columbia, it is

**ORDERED** that the complaints be dismissed for the reasons stated in the attached Memorandum.

The Circuit Executive is directed to send copies of this Order and accompanying Memorandum to the complainants, 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

Date: 10/6/15

## MEMORANDUM

The complainants have filed complaints of judicial misconduct against a judge of the United States District Court for the District of Columbia. For the following reasons, the complaints will be dismissed.

The complainants are plaintiffs in an employment discrimination suit that they filed in the United States District Court. The subject judge is the judge assigned to the matter. In July 2013, the plaintiffs filed a motion to amend/correct their fourth amended complaint in that lawsuit. Briefing on the motion was completed in September 2013. The complainants' misconduct complaint alleges that the judge's "delay ruling on [that] motion for almost two years is not only unethical, but unconscionable."

The Rules for Judicial-Conduct Proceedings expressly provide that "[c]ognizable misconduct does not include . . . an allegation about delay in rendering a decision or ruling, 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). The complainants do not allege that the judge has habitually delayed in a significant number of other cases. To the contrary, they note that "his response time for ruling on motions in other [similar] cases, were much quicker than his response times" in their case. It should also be noted that the judge has recently issued a minute order indicating his intent to issue a written opinion on the complainants' motion, but delaying entry of a final order pending resolution of representation issues that have arisen in the case.

Although the complainants do not allege that the delay in their case is part of a pattern in other cases, they do contend that it is the product of an improper motive. That motive, they allege, is that the judge is “personally bias[ed]” against them. The only evidence of such bias that they proffer is the fact that the judge has ruled “much quicker” on motions in other cases. That, however, is insufficient “to raise an inference that misconduct has occurred.” *Id.* JUDICIAL-CONDUCT RULE 11(c)(1)(D). Rather, “[s]uch 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.* JUDICIAL-CONDUCT RULE 3 Commentary. It is therefore “excluded as merits-related” from the category of cognizable misconduct, *id.*, and “must be dismissed, *id.* JUDICIAL-CONDUCT RULE 11(c)(1)(B). *See* 28 U.S.C. § 352(b)(1)(A)(ii), (iii).<sup>1</sup>

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<sup>1</sup> Pursuant to 28 U.S.C. § 352(c) and Judicial-Conduct Rule 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 Circuit Executive for the D.C. Circuit within 35 days of the date of the Circuit Executive’s letter transmitting the dismissal Order and this Memorandum. JUDICIAL-CONDUCT RULE 18(b).