

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-17-90022

## A Charge of Judicial Misconduct or Disability

Before: GARLAND, *Chief Judge*.

### ORDER

Upon consideration of the complaint herein, and the supplements thereto, filed against a judge of the United States District Court for the District of Columbia, it is

**ORDERED** that the complaint 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 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

Date: 1/10/18

No. DC-17-90022

**MEMORANDUM**

The complainant has filed a complaint of judicial misconduct against a judge of the United States District Court for the District of Columbia. For the following reasons, the complaint will be dismissed.

The complainant filed suit against the government in the U.S. District Court for the District of Columbia, alleging that he suffered damages due to the perjury, fraud, and gross negligence of the government in denying his claim for disability benefits related to brain damage resulting from care he received in the 1940's. The case was assigned to the subject judge. The United States moved to dismiss the action for lack of subject-matter jurisdiction and improper venue. Thereafter, the judge entered an order requiring the complainant to respond to the government's motion, and the judge informed the complainant that the court might treat as conceded any arguments that he failed to address in his opposition. When the judge did not rule within six months, the complainant filed the instant judicial misconduct complaint, asserting that the judge improperly delayed consideration of the motion to dismiss. Subsequently, the judge granted the government's motion to dismiss, finding that the court lacked subject matter jurisdiction, and the complainant appealed. The appeal is currently pending.

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 complainant does not allege that the judge has habitually delayed a significant number of other cases, nor does he contend that the delay in this case was the product of an improper motive. Accordingly, the complainant’s “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).<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 42 days after the date of the dismissal order. JUDICIAL-CONDUCT RULE 18(b).