

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90026
No. DC-12-90027

**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 and a Magistrate 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 judges, 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: 8/1/12

MEMORANDUM

Complainant alleges that a judge and a magistrate judge from the United States District Court for the District of Columbia have engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, complainant alleges that the subject judges conduct is “contrary to expediting matters before the court, promotes unnecessary delays, and is highly favorable to the Government and that the Government attorneys have been allowed to make a mockery of the Court rules and that the attorneys have been given too much discretion by the Court at Plaintiff expense.” Complainant's allegations, however, do not provide any grounds for action against the subject judges.

Complainant argues that the subject magistrate judge failed to require the defendant to include contact information in its initial disclosure statement nor responded to complainant's various motions with regards to the initial disclosure statement, sanctions, or request for access to the cm/ecf password. Complainant also alleges that the subject judges' conduct has resulted in delays in the case which have been to the benefit of the defendant. It appears, however, that these challenges are more appropriately categorized as a direct challenge to the subject judges procedural orders in the case such as those granting motions for extension of time or extending scheduling deadlines. 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 asserting the subject judges have failed to expeditiously move the underlying case through the system, that allegation is 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); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B). Because complainant's underlying case is still pending before the district court, 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.

Thus, because complainant's allegations are related to the merits of the subject judges' 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).