

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90009

**A Charge of Judicial
Misconduct or Disability**

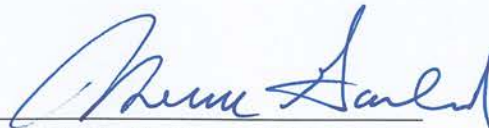
Before: GARLAND, Chief Judge of the Circuit

ORDER

Upon consideration of the complaint herein, and the supplement thereto, 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: 4-11-13

M E M O R A N D U M

The complainant alleges that a judge of the United States District Court for the District of Columbia has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, his complaint is that the subject judge improperly delayed ruling on motions in his client's Freedom of Information Act (FOIA) suit for seven months "for political and/or other non-judicial reasons," and that the judge ultimately granted a motion to dismiss in retaliation for the filing of the instant judicial misconduct complaint. For the following reasons, the complainant's allegations do not warrant action against the subject judge.

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 attributes an improper motive to the subject judge's delay. In this regard, however, the submissions merely state that "[it] has become apparent that [the subject judge], for political and/or other non-judicial reasons" intentionally delayed ruling, that the judge's final memorandum opinion "shows without question that [the subject judge] sought to delay this ruling," and that "on information and belief, political or some other extra-judicial motives also likely played a role." The complaint proffers no evidence in support of this information and belief, and the text of the judge's opinion does not reflect political or extra-judicial motives.

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 conduct 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.”).

The complainant also charges that the subject judge’s decision to grant the motion to dismiss was made in retaliation for the complainant’s filing the misconduct complaint that charged improper delay. The complaint notes that the judge’s opinion was issued on February, 27, 2013, the day after the complainant states that he filed the complaint. But the complaint was not received in the Circuit Executive’s Office until March 4, 2013, and that Office did not forward it to the subject judge until March 5, 2013. In any event, the timing is insufficient by itself to raise an inference of retaliation, and no evidence has been proffered that would be sufficient. The statement in the judge’s opinion, that the complainant’s client “complained volubly by phone and by mail -- but has avoided complicating the docket” does not, as the complainant states, “show[] without question

that [the subject judge] . . . had a bias against [the complainant's client] for daring to question when a ruling would be made.” And while the complaint does dispute the judge's conclusion that the complainant's client had failed to submit a proper FOIA request, that is an argument that goes directly to the merits of the judge's decision. It is therefore insufficient to state a claim of misconduct, although it may of course be raised in an appeal from that decision.

Because the complainant's allegations lack evidence sufficient to raise an inference that misconduct has occurred and are directly related to the merits of the subject judge's decisions, the complaint must 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).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).