

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90020

**A Charge of Judicial
Misconduct or Disability**

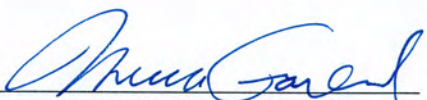
Before: GARLAND, Chief Judge of the Circuit

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: 7-17-13

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 routinely favored the defendant in complainant's underlying case, granting the defendant's motions of extension of time while refusing to act on the complainant's pending motion for summary judgment and for default judgment. For the following reasons, these allegations do not warrant action against the subject judge.

The complainant filed a civil action in the District Court and simultaneously filed a motion for summary judgment. The defendant then filed two motions for extension of time to respond to the complaint, which the subject judge granted. The complainant then filed a motion for default judgment. The defendant filed two additional motions for an extension of time which were granted. In the last order granting the motion for extension of time, the subject judge explained that all of the motions for extension of time were reasonable and were being granted for good cause. The requests for extension of time amounted to a total of less than three weeks beyond the original deadline for responding to the complainant and were necessary because of the defendant's counsel's litigation schedule. When the defendant failed to respond to the motion for summary judgment, the subject judge issued an order to show cause why the motion should not be granted as conceded. The defendant responded to the order to show cause. The complainant then filed the instant judicial misconduct complaint against the subject judge. Subsequent to

the filing of the judicial misconduct complaint, the subject judge denied without prejudice the motion for summary judgment, the motion for default judgment, and the request for relief. The judge also dismissed one claim for lack of subject matter jurisdiction and, to cure improper venue, transferred the remainder of the case to the Western District of Texas because the alleged unlawful employment practice occurred in Texas, the government records are in Texas, and the parties are in Texas. The complainant then filed a notice of appeal. The subject judge construed the notice of appeal as a motion to certify an interlocutory appeal and denied the motion.

Other than arguing that the subject judge unfairly granted the defendants' motions for extension of time while refusing to act on his pending motions for summary judgment and for default judgment, the complainant has not provided any specific evidence of wrongdoing on the part of the subject judge. The subject judge explained in an order that the motions for extension of time were being granted for good cause and detailed the reasoning. The subject judge has now acted on the motions for summary judgment and for default judgment, denying them without prejudice. The allegations against the subject judge therefore lack sufficient evidence to raise an inference that judicial misconduct has occurred. *See* U.S.C. 352(b)(1)(A)(iii) and Jud. Conf. U.S., Rules for Judicial-Conduct and Judicial-Disability Proceedings 11(c)(1)(D).

Moreover, the allegations are more appropriately characterized as a direct challenge to the merits of the subject judge's orders. A judicial misconduct proceeding is

not the appropriate avenue to obtain relief from allegedly erroneous rulings. *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.”).

Accordingly, because the complainant’s allegations lack sufficient evidence 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.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).