

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90061

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: September 29, 2014)

PRESENT: McKEE, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, after review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii).

Complainant was a pro se plaintiff in a contract dispute before the Subject Judge. Complainant moved several times for a default judgment, which the Subject Judge denied

without prejudice as premature. When Complainant eventually effected proper service upon the defendant and the defendant did not respond, Complainant requested a default, the Clerk entered a default, and Complainant again moved for a default judgment. In a detailed memorandum opinion and order, the Subject Judge concluded that a default judgment was not appropriate because Complainant had not established his right to relief. The Subject Judge permitted Complainant an additional period of time to submit evidence to establish his right to relief or to show cause why the case should not be dismissed.

Complainant moved for reconsideration. The Subject Judge denied the motion for reconsideration and dismissed the complaint. Complainant sought to re-open the case and again sought reconsideration. He also filed a petition for a writ of mandamus, seeking the Court of Appeals to direct the Subject Judge to enter a default judgment or to recuse himself. The Court of Appeals denied the petition. Later, the Subject Judge denied reopening and reconsideration. Complainant filed a notice of appeal, and the appeal is pending.

In the complaint of misconduct, Complainant alleges that the Subject Judge dismissed his complaint as a “penalty because I told the judge in a previous motion that the way he deals with the matter and merits of the case lacks impartiality.” Complainant further alleges that, “after a period of delay of 6 months and 16 days of filing my motion for reconsideration [and reopening],” the Subject Judge entered an order of “less than three pages . . . [that] does not present any legal analysis or case law citations so that we

can say that the Court might have conducted a search for the legal ground of the denial.”¹

Complainant surmises that the decision “was clearly a result of his feeling for retaliation as I accused him of bias a couple of times.” Complainant posits that, if the Subject Judge had issued a decision more quickly, “the appealing process would have been completed by now.”

Many of Complainant’s allegations are aimed to challenge the merits of decisions by the Subject Judge, including the decisions to dismiss the complaint and to deny reconsideration. As such, they are merits-related. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. This proceeding is not the appropriate forum for raising such allegations. The “misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges’ rulings.” In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

Merits-related allegations are not cognizable misconduct under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or

¹ Complainant’s first motion for reconsideration was decided within three months of filing. The allegation of an approximate six-month delay refers to the second motion for reconsideration, which also sought reopening.

procedural ruling); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (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). Complainant’s merits-related allegations are therefore dismissed.

To the extent Complainant alleges that the Subject Judge intentionally delayed a decision on his motion, delay generally is not cognizable as judicial misconduct because it effectively poses a challenge to merits of an official action by the judge – *i.e.*, the decision to assign a lower priority to a particular case. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. As previously observed, merits-related claims are not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

A claim of delay in a single case may qualify as cognizable judicial misconduct only if “the allegation concerns an improper motive in delaying a particular decision” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Here, the record does not reflect an objectively unreasonable delay in deciding the motion. Even if it did, however, there is no evidence of improper motive. When considered apart from his merits-related allegations, Complainant’s allegations of bias and retaliation are based on nothing more than speculation, suspicion, and subjective belief. This is simply not sufficient to give rise to an inference that misconduct has occurred. Thus, to the extent they are not merits-related, Complainant’s allegations are subject to dismissal as frivolous

and unsupported by evidence that would raise an inference that misconduct has occurred.
See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and
Judicial-Disability Proceedings.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C.
§§ 352(b)(1)(A)(ii) and (iii).

s/ Theodore A. McKee
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90061

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

ORDER

(Filed: September 29, 2014)

PRESENT: McKEE, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaint brought pursuant to 28 U.S.C. § 351 is hereby dismissed under 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

This order constitutes a final order under 28 U.S.C. § 352(c). Complainant is notified in accordance with Rules 11(g)(3) and 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the office of the clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk of the court of appeals, and in an envelope marked “Misconduct Petition” or “Disability Petition.” The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the Rules for Judicial-Conduct and Judicial-Disability Proceedings is available from the Clerk’s Office of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Theodore A. McKee
Chief Judge

Dated: September 29, 2014