

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90068

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 25, 2015)

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).

In 2014, Complainant, a veteran, filed a pro se civil complaint against a government agency raising claims under the constitution and the Freedom of Information Act concerning his efforts to receive health benefits. The matter was assigned to the

Subject Judge. The Subject Judge referred the matter to a Magistrate Judge (who is not named as a Subject Judge of this complaint) for purposes of exploring alternative dispute resolution. Complainant filed a motion styled “motion for change of venue.” The motion requests that the Subject Judge be recused on the grounds that he is biased against Complainant and has failed to respond to his motions.¹ The government filed a motion for leave to file dispositive motions. The Subject Judge has not yet ruled on the motions. Most recently, the Magistrate Judge issued an order permitting Complainant to submit documents to assist the Court in alternative dispute resolution.

In this complaint of judicial misconduct, Complainant alleges the Subject Judge “ignored” his pending motion and complains of only “cursory activity” in his case since its inception. Complainant attributes the alleged misconduct to “the bias of the Court to Plaintiff and US Military veterans in general.” Complainant broadly alleges the existence of “an environment of deceit and lawlessness permitted in regards to the ‘above the law’ [government agency]” and its “BETRAYAL” of military veterans.

Complainant clearly is frustrated with the progress of his case before the Subject Judge and with his as-yet unsuccessful efforts to pursue health benefits generally. Complainant's allegations do not, however, give rise to an inference that the Subject Judge has engaged in judicial misconduct. At most, Complainant's allegations present a claim of undue delay in his case. Generally, delay is not cognizable as judicial misconduct because it effectively poses a challenge to merits of official actions by the judge – *i.e.*, the

¹ The motion does not identify a different venue in which Complainant wishes to proceed.

decision to assign a lower priority to a particular case. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. 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, contrary to Complainant’s allegations, the record does not reflect objectively unreasonable delay. Although his “motion for change of venue” has been pending for a few months, it appears from the record that the case has been in alternative dispute resolution during this time. Moreover, even if Complainant could establish undue delay, there is no evidence of improper motive on the part of the Subject Judge. Although Complainant contends that the Subject Judge is biased, it is apparent that this claim is based upon nothing more than subjective belief. The record lends no support to such a claim. Accordingly, Complainant’s unsupported 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

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ORDER

(Filed: August 25, 2015)

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: August 25, 2015