

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-15-90093; 03-15-90094

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 24, 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 (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). 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 March 2014, Complainant filed a pro se civil rights complaint and a motion to proceed *in forma pauperis*. The matter was assigned to Subject Judge I. Complainant filed several documents seeking information about the case status and requesting a ruling. In August 2015, Subject Judge I administratively terminated the case because Complainant's motion to proceed *in forma pauperis* did not include the proper form. Complainant filed the form and Subject Judge I re-opened the case and granted IFP status. Subject Judge I then dismissed the complaint. Several claims were dismissed without prejudice and Complainant was granted leave to amend. Complainant has not yet filed an amended complaint.

In this complaint of judicial misconduct, Complainant recounts the procedural history of his case. He alleges that Subject Judge I's decision to administratively terminate his case after it had been pending for more than a year without judicial action "reeks of bias, lack of impartiality, failure to dispose of courts business in a timely manner, willful delay, dilatoriness thwarting of plaintiffs right to be heard and protecting the defendants."

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 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. While the delay in this case was lengthy, there is nothing to substantiate Complainant’s claims of improper motive on the part of Subject Judges I and II. Although Complainant contends Subject Judges are biased, it is apparent that this claim is based upon nothing more than subjective belief. Accordingly, Complainant’s allegations are subject to dismissal as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

In addition, Complainant observes that Subject Judge I’s administrative termination order was dated several days before the District Court received a letter from him inquiring about the status of his case, but was entered on the docket several days later. Complainant argues this “does not seem logical.”

To the extent Complainant is challenging the termination order itself, the allegation is subject to dismissal as merits-related. 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. In addition, while there was a brief delay of approximately one week in docketing Subject Judge I’s order, this does not reasonably support Complainant’s allegations of judicial misconduct. It is commonplace that a document may take a several days to be included on a court’s docket, giving rise to a minor discrepancy between the date on the document

itself and the date of the docket entry.¹ This allegation therefore is subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 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)(i), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

¹ Docket entries are created by clerk's office staff members who are not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Allegations implicating clerk's office staff therefore will not be addressed in this opinion.

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ORDER

(Filed: November 24, 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)(i), (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 **42 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: November 24, 2015