

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90009

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 18, 2017)

PRESENT: SMITH, *Chief Judge*.

This is a complaint 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, a state prisoner, filed a pro se petition for a writ of habeas corpus, which was assigned to the Subject Judge. Upon screening, the Subject Judge dismissed

two claims from the petition with prejudice and directed the state to respond to the remaining claims.¹ The state filed a response and Complainant filed a reply to the response. The petition remains pending.

In this complaint of judicial misconduct, Complainant accuses the Subject Judge “of being influenced by . . . state officials to deliver a nonsensical ruling in order to overlook state misconduct and corruption.”² Among other things, Complainant alleges that the Subject Judge deliberately misconstrued one of the habeas claims that was dismissed with prejudice: specifically, the Subject Judge “feign[ed] that I raised in Ground 6 ineffective assistance of counsel claims against my pool lawyers as opposed to violations of my right to due process . . . by depriving me of fair and timely process because of the impediments they created in refusing to allow me to file [for post-conviction relief].”

Complainant’s disagreement with the Subject Judge’s allegedly “nonsensical rulings,” including the manner in which the Subject Judge construed one of Complainant’s habeas claims, is clearly merits-related. “An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.” Rule 3(h)(3)(A),

¹ Complainant appealed the partial dismissal but later voluntarily withdrew the appeal pursuant to Fed. R. App. P. 42(b).

² Complainant presents a number of allegations concerning state officials, state judges, and attorneys. Such allegations will not be addressed in this opinion. Those individuals are not federal judges and therefore are not subject to 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*.

Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations do not constitute cognizable misconduct 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.* Accordingly, these allegations are subject to dismissal.

Next, Complainant alleges that his inability to file earlier for post-conviction relief “proves the existence of a predatory like-minded intent to manipulate law and findings; and therefore, robs this matter of any merits-based justification.” Complainant contends that the Subject Judge participates in this “collusive misconduct” in order to “exercise discriminatory practices against indigent minorities.”

Complainant fails to substantiate the allegations that the Subject Judge has colluded with, or is influenced by, state actors who wish to discriminate against Complainant. Apart from his disagreement with the merits of the Subject Judge’s rulings in his habeas proceeding, Complainant offers nothing whatsoever to demonstrate that he has experienced bias or discrimination based upon his status as an indigent minority individual. These allegations will therefore be dismissed 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.*

Finally, Complainant alleges that the Subject Judge engaged in undue delay by permitting the passage of 19 months before ordering that a response to Complainant's habeas petition be filed. Based upon information from "people to which I've spoken," Complainant suspects that "this practice is a targeted act on our particular demographic [indigent minorities]."

A period of more than a year and a half from the filing of the petition until initial screening is a substantial length of time. Generally, however, 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* 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*; Rule 3 Commentary, *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*.

Complainant has provided no evidence to support his claim that delay in his case is attributable to discrimination on the part of the Subject Judge. Complainant's vague suspicion that "other people" may have experienced delays is far from sufficient to raise an inference that the Subject Judge has engaged in judicial misconduct. Accordingly, to the extent they are not merits-related, Complainant's allegations of delay 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*.

Based on the foregoing, the complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: May 18, 2017)

PRESENT: SMITH, *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 Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, 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 Office of the Circuit Executive and on the Court of

Appeals’ internet site, www.ca3.uscourts.gov.

s/ D. Brooks Smith
Chief Judge

Dated: May 18, 2017