

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-14-90002

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: April 3, 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 successful plaintiff in a civil rights matter. After the jury returned its verdict awarding him substantial compensatory damages, Complainant filed

post-judgment motions, including requests for reinstatement to his former job and for pre-judgment interest on the damages award. The Subject Judge denied the post-judgment motions and Complainant appealed. In a decision issued in October 2012, the Court of Appeals vacated the Subject Judge's order denying Complainant's motion for pre-judgment interest and remanded that issue to the Subject Judge for adjudication.

In February 2013, at the Subject Judge's request, the parties briefed issues relevant to the request for pre-judgment interest. The Court of Appeals issued its mandate in July 2013, and the parties then filed supplemental letter-briefs in August 2013. Complainant then filed the instant misconduct complaint several months later, on January 28, 2014. The Subject Judge entered an opinion and order two days after that (on January 30, 2014), granting Complainant's motion for pre-judgment interest.<sup>1</sup> The next day, the Subject Judge retired from the bench. Recently, Complainant filed a motion for attorneys' fees and costs. Complainant's case has not yet been assigned to a new judge and the motion for fees and costs remains pending.

In this complaint of judicial misconduct, Complainant alleges undue delay in the Subject Judge's resolution of his request for pre-judgment interest. Complainant alleges, "[i]t is my belief and reasoning [*sic*] for initiating this complaint that [the Subject Judge] has willfully elected to abdicate his appointed judicial responsibility to 'expeditiously process the business of the Court' while simultaneously exhibiting a continued pattern of

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<sup>1</sup> The Circuit Executive's Office served the complaint of judicial misconduct upon the Subject Judge approximately two weeks after the Subject Judge entered the opinion and order granting pre-judgment interest.

hostility toward [Complainant].” Specifically, Complainant contends that the Subject Judge “purposely evaded the remanded issue of pre-judgment interest so as to intentionally create an expensive and protracted legal burden upon this complainant.” Complainant further alleges that, because he believed the Subject Judge to be retiring soon, the Subject Judge’s alleged delay was intended to Complainant in “an unconscionable legal predicament.”

The Subject Judge retired from the bench three days after Complainant filed this complaint of misconduct. The retirement of a federal judge renders moot complaints under the Judicial Conduct and Disability Act, because retired judges are no longer susceptible to discipline. See In re: Complaint of Judicial Misconduct, 10 F.3d 99, 100 (Judicial Council of the Third Circuit 1993) (“In effect, the retirement of a judge moots the complaint because there is no effective remedy under the statute.”) (discussing 28 U.S.C. § 372(c)(3)(B), now 28 U.S.C. § 352(b)(2)). The remedies prescribed by the Act “were clearly aimed at ‘preventing the recurrence of actions by that judicial officer that might impair the administration of justice,’ . . . actions that could no longer be taken by a judge who is no longer exercising a judicial function.” Id. (citation omitted).

Here, because the Subject Judge’s retirement has rendered the allegations moot, action on the complaint is no longer necessary. See 28 U.S.C. § 352(b)(2); Rule 11(e), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, the complaint dismissed.

In addition, I note that 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. 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 reflects a period of several months from the conclusion of briefing until the Subject Judge rendered his decision, which does not constitute objectively unreasonable delay. Moreover, Complainant’s allegations of hostile treatment are unsubstantiated. To the extent Complainant hypothesized that the Subject Judge intentionally delayed so that he might retire without resolving Complainant’s motion, the Subject Judge’s issuance of a decision prior to retirement refutes this theory.<sup>2</sup> Thus, Complainant’s allegations also would be 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.

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<sup>2</sup> Any disagreement with the Subject Judge’s decision would be 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.

For the foregoing reasons, the complaint is dismissed as moot pursuant to 28 U.S.C. § 352(b)(2).

s/ Theodore A. McKee  
Chief Judge

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ORDER

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(Filed: April 3, 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 as moot under 28 U.S.C. §§ 352(b)(2).

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](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Chief Judge

Dated: April 3, 2014