

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-14-90049, 30-14-90050

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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: September 11, 2014)

PRESENT: McKEE, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “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 1992, Complainant, a federal prisoner, was convicted of participation in a drug conspiracy. In 2008, Subject Judge II entered an order reassigning the matter “at random

pursuant to Local Rule 3(a) of the Local Rules of Criminal Procedure” from the former presiding District Judge to Subject Judge I.<sup>1</sup> In 2010, Complainant filed a motion to reduce his sentence and a motion for the appointment of counsel. Complainant later withdrew the motion for a sentence reduction and Subject Judge I therefore dismissed it without prejudice and denied the motion for appointment of counsel.

Several years later, Complainant renewed his motion for a reduction of his sentence and then, once again, withdrew it. He then filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Subject Judge I ordered a response, which was filed in June. The § 2255 motion remains pending. Complainant has since filed numerous additional motions seeking various forms of relief.

In this complaint of misconduct, Complainant alleges that Subject Judge II “manipula[ted] . . . the assignment of [Subject Judge I] to the case and by-pass[ed] the random selection process.” Complainant contends that Subject Judge II took this alleged action in order “to shield and protect the gov’t mis-conduct in this case.” Complainant further alleges that “the court has taken no action” on the § 2255 motion.

Clearly, it is Complainant’s view that Subject Judge II improperly reassigned the case to Subject Judge I. He argues, for example, that the order did not appropriately apply court procedure. To a large extent, these allegations are merits-related. “An allegation

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<sup>1</sup> The former presiding District Judge, who was not named as a Subject Judge of this complaint, passed away in 2010. It is noted that some of Complainant’s allegations concern an alleged conflict of interest between the former presiding District Judge and the prosecutor in Complainant’s case. Such allegations will not be addressed in this opinion. See Rules 4, 8(c), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

that calls into question the correctness of a judge’s ruling . . . without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations are not cognizable 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 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 argues that his allegations constitute “something more” than merits-related allegations because he believes that Subject Judge II acted with an improper motive in reassigning the case. Complainant does not, however, provide any basis whatsoever for this belief. Apart from the order itself, Complainant offers nothing but mere conjecture and speculation. Accordingly, such allegations are subject to dismissal as frivolous and unsupported by any 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, it appears that Complainant’s allegation that Subject Judge I has not yet acted on the § 2255 motion may be intended to state a claim of undue delay. 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, however, qualify as cognizable judicial misconduct 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, Complainant has not alleged delay due to an improper motive. Even more significantly, the record does not support a delay claim, as it does not reflect a period of objectively unreasonable delay. The government’s response to Complainant’s § 2255 motion was filed in June, as was Complainant’s reply to the government’s response. Thus, the matter has been ripe for adjudication for only a period of a few months. Moreover, since June, Complainant has filed numerous additional motions, including several that appear to seek to supplement the § 2255 motion with additional authority, new evidence, and new claims. As Complainant continues to file new material relating to the § 2255 motion, it is a natural consequence that the new materials will extend the time required to adjudicate the § 2255 motion.

There is no reason to presume that Subject Judge I will not decide Complainant’s § 2255 motion in an appropriate and reasonable amount of time. Accordingly, at this time, the allegations of delay 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).<sup>2</sup>

s/ Theodore A. McKee  
Chief Judge

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<sup>2</sup> After filing the initial complaint, Complainant filed an additional document containing allegations not made under penalty of perjury as required by Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I have considered these allegations under Rule 5 and conclude that they do not provide “reasonable grounds for inquiry” into the existence of judicial misconduct. Accordingly, I decline to identify any complaints based upon these allegations.

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ORDER

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(Filed: September 11, 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)(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](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Chief Judge

Dated: September 11, 2014