

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-17-90068, 03-17-90069

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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: November 17, 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 (“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 2011, a criminal complaint was filed against Complainant in a magistrate proceeding before Subject Judge II. A federal public defender was appointed. After a hearing, Subject Judge II ordered Complainant to be detained. Shortly thereafter, the United States Attorney filed a one-count criminal information and the matter was docketed as a criminal proceeding before Subject Judge I. The Government later moved to withdraw that information on grounds that an indictment had been filed in June 2011. Subject Judge I granted the motion and closed that matter, while the indictment proceeded before Subject Judges I and II. Complainant continued to be represented by the same federal public defender. Ultimately, a jury convicted Complainant of numerous charges of aggravated rape and possession of child pornography, and Subject Judge I sentenced him to 300 months' imprisonment and a lifetime term of supervised release. On direct appeal, the Court of Appeals affirmed the judgment.

Complainant filed several motions to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255. Subject Judge II issued a report and recommendation in which she recommended that the § 2255 motion be denied. Complainant filed objections. Subject Judge I denied the motion. Complainant appealed, and the Court of Appeals declined to issue a certificate of appealability.

In this complaint of judicial misconduct, Complainant presents allegations concerning his initial magistrate proceeding before Subject Judge II, which was later dismissed on the Government's motion. Complainant alleges that, at his March 2011

appearance, he was deprived of his constitutional rights because he was not informed of the date or place of the alleged crime, because he was denied the assistance of counsel, and because a trial was not scheduled “for over 77 months (6 years and 5 months) from the time of [his] arrest.” As relief, Complainant seeks dismissal of the child pornography charges against him.

Clearly, Complainant seeks to collaterally challenge his criminal conviction. His allegations are therefore 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), *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*. The “misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges’ rulings.” *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). Accordingly, all merits-related allegations will be dismissed.

To the extent Complainant presents any non-merits-related allegations, the record reveals no basis for a conclusion that judicial misconduct has occurred. Indeed, it is difficult to understand the basis for Complainant’s allegations, given that the proceeding

at issue was dismissed. Accordingly, any remaining allegations are 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*.

Finally, in a supplement to the complaint, Complainant alleges that Subject Judges I and II have unduly delayed ruling on several motions titled as motions to dismiss, which he filed in the past several months after the Court of Appeals denied him a certificate of appealability and which raise essentially the same claims presented in this complaint of judicial misconduct. He surmises that the “improper motive for delaying a judgment on [his] motions” is “to continue the violations which are raised by those motions.”

A claim of delay generally does not constitute cognizable judicial misconduct, as 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*. 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*.

As a factual matter, the record does not support Complainant’s claim of undue delay. Complainant’s motions to dismiss have been pending for no more than a few months, and Complainant has chosen to amend and supplement the motions several times

since the initial submissions. Accordingly, 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, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). This is Complainant's third complaint of judicial misconduct to be dismissed on these grounds. *See* J.C. Nos. 03-16-90052, 03-16-90062.

Complainant's attention is therefore directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>1</sup> Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ D. Brooks Smith  
Chief Judge

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<sup>1</sup> Rule 10(a) of the *Rules of Judicial-Conduct and Judicial-Disability Proceedings* provides:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

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(Filed: November 17, 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)(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](http://www.ca3.uscourts.gov).

s/ D. Brooks Smith  
Chief Judge

Dated: November 17, 2017