

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90103

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 13, 2018)

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 filed a pro se civil rights complaint naming more than forty individuals and entities, including Complainant’s ex-wife, state court judges, public

officials, police officers, a municipality, state agencies, and various others, in which he presented allegations concerning state domestic relations proceedings and subsequent related state court proceedings. In essence, Complainant claimed that state court judges and officials have been conspiring with his ex-wife for more than a decade to harm his interests in many ways. The matter was assigned to the Subject Judge. After twice granting Complainant leave to amend the complaint, the Subject Judge concluded that further amendments would be futile and dismissed the complaint with prejudice. On appeal, the Court of Appeals affirmed the judgment.

Complainant filed a second pro se civil rights complaint, presenting similar allegations concerning his ex-wife and the purported vast, ongoing conspiracy against him. After permitting an opportunity to amend, the Subject Judge dismissed the second complaint with prejudice. Complainant's appeal of that judgment remains pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge is involved in the same conspiracy described in the two civil rights complaints.¹ Complainant claims that the Subject Judge "encouraged and facilitated the ongoing willful civil rights violations that are continuing . . . by Defendants who have been named in the lawsuits and are engaged in a criminal enterprise. . . ." Among other things, Complainant observes that the Subject Judge's former career as a state attorney general coincided with

¹ To the extent the allegations implicate individuals who are not federal judges, such as state court judges, public officials, police officers, and others, the allegations will not be addressed in this opinion. Only federal judges are 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*.

the timing of some of the facts set forth in the two civil rights complaints, and alleges that the Subject Judge was at one point employed by a law firm that contributes to the political campaign of a public official who is allegedly in cahoots with Complainant's ex-wife. In addition, Complainant alleges that the Subject Judge's failure to grant him relief demonstrates "a personal bias towards Plaintiff" and is a result of the Subject Judge's efforts to "bury [Complainant's] case to protect his own interests and personal acquaintances and business partners." Finally, Complainant alleges that the Subject Judge suffers from a disability because he "is overwhelmed by his caseload." Specifically, Complainant alleges that the Subject Judge took approximately two months to act on a request for emergency relief.

It is apparent that Complainant's allegations are, in large part, premised upon his disagreement with the Subject Judge's orders dismissing the two civil rights complaints. Such allegations are 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.

When considered apart from the merits-related allegations, Complainant’s remaining allegations lack evidentiary support and, indeed, many of the allegations are “facially incredible or so lacking in indicia of reliability that no further inquiry is warranted.” *See* Commentary on Rule 11, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. For instance, Complainant’s unsupported theory that the Subject Judge’s role as a state attorney general gave rise to a relationship between the Subject Judge and the public officials named in Complainant’s complaints, and that these supposed relationships, without more, reflect the Subject Judge’s involvement in a vast conspiracy spearheaded by Complainant’s ex-wife, is simply not credible. Similarly, Complainant identifies campaign donations made by the Subject Judge’s former law firm to the political campaign of a public official, but offers nothing to substantiate his hypothesis that the public official is involved in the ex-wife’s purported conspiracy against Complainant, or that the donations in any way reflect any impropriety on the part of the Subject Judge. Finally, Complainant’s allegation of disability is similarly unsubstantiated. The allegation is premised solely on the Subject Judge’s taking

approximately two months to resolve a request for relief, an amount of time that, on its face, does not reflect unreasonable delay.²

In sum, a review of the record reveals no basis for any claim of judicial misconduct or disability. Complainant's remaining allegations are therefore 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*.

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

s/ D. Brooks Smith
Chief Judge

² Moreover, even if the delay were unreasonably long (and it is not), delay generally is not cognizable as judicial misconduct because it effectively poses a challenge to the 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*.

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ORDER

(Filed: March 13, 2018)

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: March 13, 2018