

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90014

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 9, 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 action, which was assigned to the Subject Judge. Approximately one month after the complaint was received in the District Court, Complainant moved for the Subject Judge’s recusal on grounds of undue delay and bias.

Shortly thereafter, the Subject Judge issued an order granting Complainant leave to proceed *in forma pauperis*, directing that no summons shall issue until the complaint is screened by the court, and denying the recusal motion as frivolous.

About two months later, the Subject Judge issued an order directing Complainant to cease and desist from engaging in harassing telephone communications with the Clerk of the Court and the Subject Judge's chambers, and further directing Complainant to file a brief addressing the proper venue for the proceeding. Complainant responded by filing a document titled, "Notice to Withdraw this Case from this Jurisdiction." Construing the notice as a motion to voluntarily withdraw the complaint, the Subject Judge granted the motion and closed the case.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge "refused to allow the complaint to be served on the defendant" for an approximately three-month period. Complainant further alleges that he has not experienced similar delay in other federal courts, and that he therefore "assume[s] [it] is based on bias or malpractice by the judge in question." Finally, Complainant alleges that the Subject Judge's decision to deny his recusal motion "heightens the concern . . . for bias."

With regard to Complainant's allegations of undue delay, delay is not generally 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. 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’s civil rights action had been pending for under four months when he voluntarily withdrew it. As a factual matter, the record reveals no period of undue delay in Complainant’s proceeding. In a busy court, a period of a few months prior to screening a complaint is neither unusual nor excessive. Moreover, apart from Complainant’s subjective opinion that the Subject Judge harbors a bias against him, there is nothing in the record to substantiate a claim that any perceived delay is the result of bias or other improper motive on the part of the Subject Judge. Accordingly, these allegations 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.*

To the extent Complainant attempts to collaterally challenge the Subject Judge’s denial of his recusal motion, such allegations are merits-related. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, 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. Accordingly, Complainant's merits-related allegations are also subject to dismissal.

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

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: April 9, 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)(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: April 9, 2018