

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-18-90028

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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: May 18, 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 is a prisoner and a frequent pro se litigant. At least five of his civil proceedings -- two civil rights actions, two mandamus petitions, and a habeas petition -- were assigned to the Subject Judge. In this complaint of judicial misconduct,

Complainant alleges that numerous decisions and rulings in Complainant’s civil proceedings reflect “current and ongoing sabotage and subterfuge” on the part of the Subject Judge, result in a “complete miscarriage of justice” and a “fraud upon the court,” and constitute a “blatant wanton breach of . . . fiduciary, mandatory, and nondiscretionary duties as a federal judge.” In addition, Complainant alleges that one of his proceedings, a civil rights action that has been pending since 2011, has been unduly delayed. Finally, Complainant alleges that the Subject Judge “had actual knowledge and acquiesced” in misconduct on the part of a government attorney in another of Complainant’s civil rights actions.<sup>1</sup>

Clearly, the majority of Complainant’s 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, all merits-related allegations are subject to dismissal.

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<sup>1</sup> To the extent Complainant alleges misconduct by a government attorney, the attorney is not a federal judge and therefore is not 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*. Allegations against such a non-covered individual are beyond the scope of this proceeding and will only be addressed insofar as they pertain to the Subject Judge.

To the extent Complainant alleges undue delay in his civil rights action, a claim of delay generally is a merits-related claim, as it effectively poses a challenge to the merits of a 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*. Thus, 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*.

While Complainant’s civil rights action has been ongoing for a substantial period of time, the docket reveals no lengthy period of inactivity. Currently, the parties appear to be engaged in a contentious process of pre-trial discovery. Throughout the pendency of the action, the parties have engaged in substantial motions practice and the Subject Judge has diligently ruled upon those motions. Complainant himself has filed numerous and frequent submissions, including motions to compel discovery, for summary judgment, and seeking appointment of counsel and court-appointed experts, a protective order, and injunctive relief. In addition, Complainant has filed at least seven interlocutory appeals. Certainly, Complainant’s frequent filings require substantial time to consider and resolve, and have therefore contributed to the pace of the litigation. Thus, to the extent there has been delay, as a factual matter, such delay is not undue in this matter.

More importantly, Complainant offers no evidence that the Subject Judge acted with an improper motive to delay the progress of the litigation. A careful review of the

record also reveals nothing to substantiate such a claim. Accordingly, Complainant's allegations of improper motive leading to undue delay are subject to dismissal as 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)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, Complainant's allegation that the Subject Judge knew of and acquiesced in misconduct on the part of a government attorney is unfounded. Although Complainant accuses the attorney of bad faith and making false statements, it appears he bases these accusations solely upon the attorney's role in opposing his substantive claims in the litigation, which he views as having merit. He provides no evidence to support his allegations that the Subject Judge was aware of any alleged misconduct on the part of the attorney or that the Subject Judge otherwise engaged in any form of judicial misconduct. Accordingly, Complainant's 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*.

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



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ORDER

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(Filed: May 18, 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](http://www.ca3.uscourts.gov).

s/ D. Brooks Smith

Chief Judge

Dated: May 18, 2018