

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-18-90166; 03-18-90167

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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: August 10, 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 (“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).

Complainant was a defendant in a criminal proceeding before Subject Judges I and II. After a jury found Complainant guilty, Subject Judge I sentenced him to a substantial term of imprisonment. The Court of Appeals affirmed the judgment. Complainant filed a motion to set aside, vacate, or correct the sentence under 28 U.S.C. § 2255, which Subject Judge I denied. The Court of Appeals declined to issue a certificate of appealability. Since that time, Complainant has filed more than fifty motions, petitions, memoranda, letters, requests, and other documents. Among them, in October 2017, Complainant filed two documents titled motions to dismiss, which argue that Complainant's right to a speedy trial was violated. Subject Judges I and II have not acted on those motions. Complainant alleges that Subject Judges I and II "engaged in judicial misconduct by failing to set a date for a judgement [*sic*] on my motion[s] to dismiss . . . . The foregoing misconduct occurred to delay a dismissal of counts 1 to 31 of my indictment."

In addition, several months ago, Complainant filed a civil rights complaint. To date, neither Subject Judge has acted on that complaint. It appears that Complainant has not paid the filing fee, nor has he filed a motion to proceed *in forma pauperis*. Complainant alleges that Subject Judges I and II "engaged in judicial misconduct by failing to set a date for a trial for my lawsuit. . . . The foregoing misconduct occurred to delay my award for monetary damages."

Because Complainant's allegations are premised upon the Subject Judges' failure, to date, to render a decision on Complainant's specified court filings, these allegations are

best understood as claims of undue delay. 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. Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.”); 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*. 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*.

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 offers no evidence whatsoever that the Subject Judges acted with an improper motive to delay the progress of Complainant’s proceedings.<sup>1</sup> A careful review of the record reveals nothing to substantiate such claims. Accordingly, Complainant’s allegations of improper motive leading to undue delay are subject to dismissal as

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<sup>1</sup> As a factual matter, it is not clear that there has been undue delay in resolving Complainant’s submissions in any event. Specifically, the civil rights complaint may not properly be before the Subject Judges given Complainant’s failure to pay the filing fee. Moreover, that complaint was submitted less than four months ago. Similarly, it is not clear that Complainant properly moved to dismiss the indictment at this stage of his criminal proceeding.

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

Complainant previously filed several complaints of judicial misconduct. *See* J.C. Nos. 03-16-90052, 03-16-90062, 03-17-90068, 03-17-90069. Complainant's prior complaints were dismissed as non-cognizable, frivolous, and unsupported. In the opinion dismissing J.C. Nos. 03-17-90068 and 03-17-90069, Complainant was warned that future abuse of the judicial misconduct complaint procedure could result in the imposition of filing restrictions under Rule 10, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant nonetheless filed the most recent complaint, which is merits-related, frivolous, and unsupported. Accordingly, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council to determine whether to issue an order to show cause why Complainant should not be enjoined from filing further complaints under the Judicial Conduct and Disability Act. *See* Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>2</sup>

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<sup>2</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,

s/ D. Brooks Smith  
Chief Judge

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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: August 10, 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](http://www.ca3.uscourts.gov).

s/ D. Brooks Smith  
Chief Judge

Dated: August 10, 2018