

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90169

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(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 (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, a prisoner, filed a pro se civil rights complaint and related request for a temporary restraining order and preliminary injunction, which were assigned to the

Subject Judge. The Subject Judge terminated the complaint for failure to pay the filing fee or file a proper motion to proceed *in forma pauperis*. Complainant sought reconsideration, arguing that he was encountering difficulties in obtaining a certified account statement. The Subject Judge denied reconsideration, but stated that Complainant could submit a sworn affidavit in lieu of a prison account statement if necessary. Complainant later filed a motion to proceed *in forma pauperis* accompanied by a sworn affidavit, which the Subject Judge granted. The Subject Judge then reopened the case and Complainant filed an amended complaint, which remains pending.

In this complaint of judicial misconduct, Complainant alleges that he faces imminent danger of serious physical injury or death at the hands of prison officials, as described in his civil rights complaint and motion for preliminary relief. Complainant contends that the Subject Judge improperly terminated the complaint and required Complainant to file a proper motion to proceed *in forma pauperis*; those actions indicate, according to Complainant, that “[t]he court is working in collaboration with this prison to prevent prisoners from successfully filing non-frivolous suits!” Complainant further alleges, “the district court is clearly not taking this matter seriously . . . [because] nothing has been done!”

To the extent this complaint reflects Complainant’s disagreement with the Subject Judge’s decision to terminate the complaint due to a failure to pay the filing fee or submit a proper motion to proceed *in forma pauperis*, the allegations are merits-related. 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.”). 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 will be dismissed.

To the extent the complaint concerns the Subject Judge’s failure, to date, to act on Complainant’s amended complaint and motion for preliminary relief, such allegations are best understood as a claim of undue delay. Generally, delay also is a non-cognizable 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* 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*.

It is noted that the amended complaint has been pending only about two months, which is not an objectively lengthy period. More importantly, even if Complainant could demonstrate substantial delay, Complainant offers no evidence whatsoever that the Subject Judge has acted with an improper motive in this proceeding. Complainant surmises that the Subject Judge is collaborating with prison officials, but offers nothing to

substantiate this claim, and the record reveals no evidence in support of it. Without more, mere speculation and conjecture is inadequate to support a claim of improper motive. 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*.

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: 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.

s/ D. Brooks Smith
Chief Judge

Dated: August 10, 2018