

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90190

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 26, 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).

In 2011, Complainant filed a pro se petition for a writ of habeas corpus. The matter was assigned to the Subject Judge, who granted Complainant several extensions of time and permitted him to amend the petition. Complainant also filed a number of

miscellaneous motions, including a motion to set aside the state court's findings of fact, a motion for the appointment of counsel, requests for the production of documents and for discovery, and a motion to compel access to the prison law library.

Ultimately, in 2014, the Subject Judge issued a detailed memorandum opinion and order denying the petition and declining to issue a certificate of appealability, although the Subject Judge did not expressly rule on Complainant's miscellaneous motions. Complainant appealed. The Court of Appeals declined to issue a certificate of appealability, noting, *inter alia*, that a failure to rule on the miscellaneous motions did not warrant a certificate of appealability because Complainant did not make a substantial showing of the denial of a constitutional right.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge violated Complainant's constitutional rights by failing to "acknowledge, consider or rule" on the miscellaneous motions, by "[taking] over three (3) years before dismissing application for writ of habeas corpus," and by declining to conduct an evidentiary hearing or issue a certificate of appealability. Complainant contends that this constitutes conduct prejudicial to the effective and expeditious administration of the business of the courts.

Clearly, Complainant's dispute with the Subject Judge's decisions to deny the habeas petition without an evidentiary hearing and to decline to issue a certificate of appealability 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*. Accordingly, these allegations will be dismissed.

Complainant’s allegation concerning the period of time it took to resolve his habeas petition is best understood as a claim of undue delay.¹ 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*.

Complainant offers no evidence that the Subject Judge has acted with an improper motive in this proceeding. 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, it appears that the Subject Judge implicitly denied Complainant’s miscellaneous motions for counsel, discovery, and related relief at the time that the

¹ It bears noting that, after filing the initial petition in 2011, Complainant sought three extensions of time in which to amend the petition, and ultimately filed the amended petition in mid-2012. Then, after the state filed its response to the petition, Complainant sought leave to file a reply, which he did in 2013. Thus, the petition was not ripe until 2013, and the Subject Judge resolved it the following year.

Subject Judge denied the habeas petition. Any disagreement with that implicit denial is also a merits-related claim and is therefore subject to dismissal. *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*. To the extent Complainant alleges that a failure to provide an express ruling constitutes judicial misconduct, such an allegation is 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: September 26, 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: September 26, 2018