

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90212, 03-18-90213, 03-18-90214

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 16, 2019)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three United States District Judges (“Subject Judge I,” “Subject Judge II,” and “Subject Judge III”). 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 litigant who has pursued a civil suit against the same corporation for approximately twenty years, claims that the Subject Judges and/or members of their

families have all been receiving bribes or otherwise been improperly influenced by the defendant corporation. Complainant references a “massive cash influence” exerted by the corporation and unspecified “business deals” with “Judges, Judges’ spouses and Judges’ families.”

Complainant appears to assert that the Subject Judges’ actions in his civil litigation demonstrate the existence of corruption. The vast majority of the present complaint, however, consists of Complainant’s disagreement with the Subject Judges’ decisions and rulings. Complainant alleges that Subject Judge I and II were “simply obligated by Supreme Court Law to lift the stay and proceed to damages” and there was “no decision” to make. Complainant also complains about Subject Judge III’s assignment of his case to Subject II after Subject Judge I recused herself. These allegations are clearly 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 are subject to dismissal.¹

¹ Complainant attached approximately four hundred pages of exhibits to his complaint. Most of these exhibits concern the merits of the underlying civil suit. As discussed above, merits-related allegations are not cognizable in these proceedings. Complainant also attached exhibits complaining about the conduct of attorneys for the defendant corporation. To the extent Complainant’s allegations concern actions by individuals who are not covered by the Judicial Conduct and Disability Act, including defense counsel and

Apart from his disagreement with the merits of the Subject Judges' decisions, Complainant engages in speculation based on what appears to be his own internet research. Attached to his complaint are news articles and photocopies of articles that he claims demonstrates the existence of misconduct. For example, Complainant alleges that the documents show that Subject Judge I's husband worked for the defendant corporation in the 1990s. Complainant further alleges that "hundreds" of graduates from Subject Judge I's undergraduate alma mater were hired by the corporation. Complainant also maintains that donations were made by the corporation to the university that both Subject Judge I and her husband attended as undergraduates. The specific donations complained of are discussed in an article from 1989.

Complainant's exhibits have been reviewed and they do not support a claim of judicial misconduct. Indeed, one of the exhibits to the present complaint is a letter that Complainant's attorney submitted to Subject Judge I seeking her recusal based on her husband's prior work for the defendant corporation and the defendant's donations. Upon receipt of this letter, Subject Judge I promptly recused herself from the civil matter and the litigation was reassigned to Subject Judge II.

In any event, there is no evidence of corruption or any other judicial misconduct. Subject Judge I first issued an order in the underlying litigation in 2007 and later the litigation was formally reassigned to her in 2015 – years after her husband allegedly worked for the corporation. Complainant's contention that Subject Judge I's decisions in

others, the allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

the civil suit were somehow improperly influenced by the defendant corporation are dismissed 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*.

Complainant alleges that Subject Judge II was likewise influenced by the corporate defendant. In support of this claim, Complainant alleges that Subject Judge II's relative is a realtor who was involved with the sale of the corporation's former headquarters in 2016 – two years before Subject Judge II was assigned the case in question. Complainant does not explain how this realtor is related to Subject Judge II other than the fact that the two individuals have the same last name. Complainant further speculates that the realtor is using “many aliases” and purposefully gave an incorrect spelling of her name to a news outlet. Even if the individual in question is related to Subject Judge II, Complainant's allegations constitute nothing more than baseless innuendo and will therefore be dismissed 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*.

Complainant also complains about comments that Subject Judge II made at a hearing expressing incredulity that Complainant had pursued litigation against the same corporate defendant for twenty-three years. Subject Judge II made the comments at issue after admonishing Complainant and his attorney for submitting papers containing inappropriate attacks on the opposing parties and after expressing frustration with

Complainant’s attempt to argue on his corporations’ behalf even though they were represented by counsel. The transcript has been reviewed and the comments complained of do not rise to the level of judicial misconduct. *Cf. Liteky v. United States*, 510 U.S. 540, 555–56, 114 S. Ct. 1147, 1157 (1994) (“Not establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge’s ordinary efforts at courtroom administration—even a stern and short-tempered judge’s ordinary efforts at courtroom administration—remain immune.”). The allegations are dismissed. 28 U.S.C. § 352(b)(1)(A)(i); Rule 11(c)(1)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant further alleges that Subject Judges I and II engaged in undue delay because a prior (and now retired) judge’s referral of the litigation to a federal agency was “moot” and it was “simply their job to schedule damages.” Generally, however, delay is not cognizable as judicial misconduct because it effectively poses a challenge to merits of official actions by the judge. *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*. In any event, the docket reflects

that the matter was stayed in 2006 and that subsequent motions to lift the stay were denied.

Complainant has provided no evidence to support his claim that any putative delay in his case is attributable to an improper motive on the part of any of the Subject Judges. Accordingly, to the extent they are not merits-related, Complainant's allegations of delay 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*.

Based on the foregoing, the 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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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
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ORDER

(Filed: January 16, 2019)

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.

s/ D. Brooks Smith

Chief Judge

Dated: January 16, 2019