

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-19-90007

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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: February 21, 2019)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”).<sup>1</sup> 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

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<sup>1</sup> The allegations of the complaint also refer to a United States Magistrate Judge, although the Magistrate Judge was not named as a Subject Judge of the complaint. Upon consideration, the allegations concerning the Magistrate Judge do not provide “reasonable grounds for inquiry” into the existence of judicial misconduct. Accordingly, no complaint will be identified against the Magistrate Judge. See Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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 March 2018, Complainant, a state prisoner, filed a civil rights action in District Court. The Subject Judge granted Complainant permission to proceed *in forma pauperis*, screened the case pursuant to 28 U.S.C. § 1915(e), and determined that the complaint should proceed. The defendants were served, but did not timely file an answer. In October 2018, in response to motions and correspondence from Complainant, the Clerk entered a default against the defendants. Complainant promptly filed a motion for a default judgment. In January 2019, the defendants moved to set aside the default and for additional time in which to answer the complaint. The motions remain pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge has “ignored” his motion for a default judgment. Complainant further alleges that the failure to grant a default judgment in his favor demonstrates “favoritism to the state defendants” and therefore “fail[s] to demonstrate impartiality, propriety, and independence.” About two weeks after the initial complaint, Complainant filed a supplemental complaint reiterating these allegations and also alleging that the Subject Judge “vilified [his] character, credibility, reputation and record.”

The allegations concerning the Subject Judge’s failure, to date, to act on Complainant’s motion for a default judgment are best understood as a claim of undue delay. Generally, delay does not constitute cognizable misconduct, as it effectively poses a challenge to merits of official actions by the judge – *i.e.*, the decision to assign a lower

priority to a particular case. *See* 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.”); 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 alleges that the Subject Judge is intentionally delaying his case due to an improper motive in the form of favoritism toward the defendants. Yet a review of the record reveals that the Clerk entered a default and Complainant moved for a default judgment approximately four months ago. A period of several months to rule on a dispositive motion does not constitute undue delay. Moreover, Complainant’s allegations of favoritism are unsubstantiated. Complainant relies solely on the length of the alleged delay to support his allegation. Even if resolution of the motion has been unduly delayed (and, as of this date, it has not), the length of a delay, without more, does not provide evidence that judicial misconduct has occurred. Accordingly, Complainant’s allegations 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, there is no evidence that the Subject Judge has “vilified” Complainant in any regard. This allegation is therefore subject to dismissal as both frivolous and unsupported by evidence. 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, the 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

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(Filed: February 21, 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)(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: February 21, 2019