

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-19-90033, 03-19-90034

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 4, 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 (“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, a state prisoner, filed a pro se civil rights complaint that was removed to District Court in May 2018. Shortly thereafter, Subject Judge II screened the complaint

pursuant to the Prison Litigation Reform Act, 28 U.S.C. § 1915A, and issued a report and recommendation recommending that the complaint be dismissed as meritless and malicious. Complainant filed objections. Subject Judge I has not yet ruled on the report and recommendation or Complainant's objections. Over the past several months, Complainant has filed numerous submissions, which appear to be intended to reiterate his objections and request a ruling from Subject Judge I.

This complaint of judicial misconduct primarily alleges undue delay on the part of Subject Judge I in resolving Complainant's objections to Subject Judge II's report and recommendation. Rule 4(b)(2) provides, "[c]ognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." Rule 4(b)(2), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Here, Complainant's objections to the report and recommendation have been pending for nearly a year, which is a significant period of time. Complainant has not, however, provided anything to substantiate his belief that this delay is attributable to an improper motive. Although he claims that the Subject Judges are "intentionally and willfully sponsoring and/or colluding to allow the delay of justice for a lawful and well-presented Complaint," a careful review of the record reveals no basis for such allegations. Accordingly, any allegation of improper motive is subject to dismissal as unsupported by

evidence that would raise an inference that misconduct has occurred.¹ 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant also sets forth allegations disagreeing with the substance of Subject Judge I’s report and recommendation. Allegations that question the correctness of a judicial ruling do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”).

Complainant’s merits-related allegations therefore will be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *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

¹ In the absence of an improper motive, concerns of undue delay should be raised in an appropriate judicial proceeding, such as a petition for a writ of mandamus in the Court of Appeals pursuant to Fed. R. App. P. 21.

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ORDER

(Filed: June 4, 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.

s/ D. Brooks Smith

Chief Judge