

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90024

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 1, 2020)

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 Magistrate 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).

The present complaint was filed by an attorney on behalf of his client. The attorney states in his cover letter that he has attempted “for a year to receive a written reply from [the Subject Judge] regarding the disposition of a case which he oversaw.”

The complaint itself alleges that it “follows up on four written requests to [the Subject Judge] to forward copies of the requisite court records which confirm clearly in writing the statutory provisions and full nature of the crime to which [Complainant] pled guilty.” The complaint further alleges that a series of oral requests were also made to court personnel and that responses were “inconsistent.”¹

In essence, Complainant complains about the Subject Judge’s putative delay in responding to requests for information about Complainant’s court records. Allegations about delay are not considered cognizable misconduct. *See* Rule 4(b)(2), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“Cognizable 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.”). *See also* 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Furthermore, Complainant makes no allegations about the Subject Judge’s alleged improper motive or habitual delay in a significant number of unrelated cases. Accordingly, Complainant’s allegations of delay are subject to dismissal.

In any event, there is no evidence of misconduct on the part of the Subject Judge. Indeed, the record reflects that the Subject Judge responded to Complainant’s inquiry in 2012 and, more recently, it appears that Complainant’s counsel’s 2019 inquiry was given

¹ To the extent Complainant complains of the actions of any individuals who are not federal judges (such as Clerk’s office and other support staff), his allegations cannot be addressed in these proceedings. 28 U.S.C. § 352(b)(1)(A)(i); Rule 1, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

to another office for a response. There is no evidence of any judicial misconduct on the part of the Subject Judge and Complainant's allegations are, therefore, also subject to dismissal as unsupported by any 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)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: October 1, 2020)

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: October 1, 2020