

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-20-90091

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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: March 1, 2021)

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).

Complainant alleges that the Subject Judge has delayed making a decision on a motion for summary judgment. Allegations of delay, however, are considered merits-related and are not cognizable 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 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.”). Complainant’s merits-related allegations of delay are, therefore, dismissed. Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Furthermore, there is no evidence of improper motive or habitual delay. Indeed, the docket for the case referenced on Complainant’s complaint form has been reviewed and there is no evidence of improper conduct or any delay on the part of the Subject Judge. The record reflects that Complainant’s motion for summary judgment was stricken from the record one month after it was filed and Complainant was directed to file a response to an already pending motion to dismiss. When Complainant failed to file a timely response, the Subject Judge issued an order to show cause why the matter should not be dismissed for lack of prosecution. When Complainant failed to respond, the matter was dismissed by the presiding District Judge. Accordingly, Complainant’s allegations are also subject to dismissal as frivolous and unsupported by sufficient evidence to 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*.

Based on the above, this complaint will be dismissed under 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: March 1, 2021)

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: March 1, 2021