

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-21-90057

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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: November 3, 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 District 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 is a prisoner who is complaining about the Subject Judge’s putative delay in ruling on a motion to vacate his sentence. Complainant alleges that the Subject Judge is “intentionally and deliberately delaying ruling” on the motion. However,

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.” Rule 4(b)(2), *Rules for Judicial-Misconduct and Judicial-Disability Proceedings*. See also Commentary on Rule 4 (“With regard to Rule 4(b)(2), a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”) Accordingly, Complainant’s allegation of delay is subject to dismissal as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 4(b)(2), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent Complainant alleges that the Subject Judge had an improper motive for his putative delay, his allegations are baseless. A review of the record reveals no basis for a conclusion that the Subject Judge has “intentionally and deliberately” delayed a ruling. Furthermore, a review of the docket reflects that the motion in question was ruled on by the Subject Judge in advance of the deadline that Complainant alleged should apply to the motion. Accordingly, Complainant’s remaining allegations are subject to dismissal 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*.<sup>1</sup>

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<sup>1</sup> To the extent Complainant alleges that the other judges named in his complaint have also engaged in judicial misconduct, I have considered his allegations pursuant to Rule 5 of the

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

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*Rules for Judicial-Conduct and Judicial-Disability Proceedings* and decline to identify a complaint based on these allegations.

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ORDER

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(Filed: November 3, 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: November 3, 2021