

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-12-90076

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 5, 2013)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (hereinafter “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 “misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or

motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges' rulings." In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

Complainant alleges that the Subject Judge engaged in "deliberate delay in his case" for seven years for an "illicit [motive]." Cognizable misconduct, however, 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 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, to the extent that Complainant is complaining about the length of time it took the Subject Judge to issue a decision regarding his habeas petition, his complaint is subject to dismissal as merits-related. Commentary on Rule 3 ("With regard to Rule 3(h)(3)(B), a complaint of delay in a single case is excluded as merits-related.")

In any event, a review of the docket reveals that the Subject Judge did not improperly delay Complainant's habeas petition for seven years. Rather, after the case was re-assigned to him in the fall of 2002, the Subject Judge granted a motion for the appointment of counsel and the case was thereafter placed in civil suspense. One week later, Complainant filed objections to the Magistrate Judge's previously issued Report and Recommendation. Respondents filed two unopposed motions for enlargements of time to file a response. Once Respondents' response was filed, the case was transferred to the

current docket for final disposition and the Subject Judge held oral argument in the fall of 2004.¹ Several months after the transcript of oral argument was filed in 2006, the Supreme Court issued House v. Bell and the Subject Judge requested additional briefing from the parties on the impact of this case. Petitioner then sought, and was granted, leave to supplement his habeas petition in late 2006. Approximately one year later, the Subject Judge entered an order approving and adopting the Report and Recommendation in part, rejecting it in part, and denying Complainant's habeas petition. After Complainant filed his notice of appeal, the case was transferred to another judge and the Subject Judge has not been assigned to the case since June 2008.

To the extent Complainant suggests that the Subject Judge had an improper motive for his putative delay, his allegations are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) as frivolous and unsupported by any evidence that would raise an inference that misconduct occurred. As discussed above, the District Court docket and record have been reviewed and they do not support Complainant's allegations of deliberate delay for an "illicit" motive. Nor is there any evidence that the Subject Judge denied Complainant's habeas petition after allegedly agreeing to grant it at oral argument because Complainant subsequently filed a mandamus petition making allegations of delay.² Indeed, the hearing transcript has been reviewed and it does not reflect that the

¹ A transcript of this hearing was not docketed until approximately eighteen months after oral argument. There is no evidence that this delay is in any way attributable to the Subject Judge.

² Complainant withdrew this mandamus petition pursuant to Federal Rule of Appellate Procedure 42(b).

Subject Judge “agreed” to grant Complainant’s habeas petition. Rather, at the conclusion of the hearing, after a discussion with counsel off the record, the Subject Judge stated that he was taking the matter “under advisement” and would wait to hear from counsel.³

Finally, although Complainant does not name any additional specific Subject Judges in his complaint, he alleges that the Court of Appeals “retaliated against him for filing a judicial misconduct complaint against [the Subject Judge] and affirmed [the Subject Judge’s] outrageous ruling.” Complainant goes on to request that his complaint be transferred to the Ninth Circuit. Rule 26 provides that in “exceptional circumstances” a chief judge or a judicial council “may ask” the Chief Justice to transfer a proceeding. Rule 26, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such “exceptional circumstances” are not present here. Complainant’s vague and unsupported allegation that the “Third Circuit Court of Appeals” retaliated against him does not warrant requesting a transfer.

Furthermore, to the extent Complainant seeks to make additional allegations of judicial misconduct against judges who have not been named as subject judges, I decline to identify a complaint based on Complainant’s vague and unsupported allegations of

³ Complainant further alleges that the Subject Judge “informed” the District Attorney at the hearing to offer Complainant a Third Degree Murder Conviction, but that the Commonwealth “never offered” it. This alleged exchange is not reflected in the hearing transcript and, even assuming *arguendo* that it occurred during the off the record discussion, such a discussion with all counsel present does not support a complaint of judicial misconduct.

retaliation.⁴ These allegations do not constitute “reasonable grounds for inquiry” into the existence of judicial misconduct. See Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings (governing identification of complaints). Indeed, there is no record of a prior complaint of judicial misconduct being filed by Complainant with the Clerk’s Office of the Court of Appeals.

Moreover, Complainant offers no evidence in support of this retaliation claim other than his disagreement with the decision of a panel of this Court. Such merits-related allegations are not cognizable under the Judicial Conduct and Disability Act. 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related”); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling).

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

/s/ Theodore A. McKee
Chief Judge

⁴ In a prior unsworn submission, Complainant “asserted additional Judicial Misconduct” against the panel which denied his appeal and the Court of Appeals judges who refused to grant rehearing *en banc*. I likewise decline to identify a complaint based on these unsworn allegations.

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ORDER

(Filed: August 5, 2013)

PRESENT: McKEE, 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 of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive of the Court of Appeals, 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 of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

/s/ Theodore A. McKee
Chief Judge

Dated: August 5, 2013