

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90088

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 20, 2014)

PRESENT: McKEE, 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, a federal prisoner, filed a pro se civil rights complaint in September 2012 in which he claimed that prison officials were deliberately indifferent to his serious

medical needs. In December 2012 and January 2013, he filed a number of motions, including a motion for a temporary restraining order and a motion for a protective order. In February 2013, the Subject Judge issued an opinion denying many of the motions as premature because the defendants had not yet answered the complaint, and directed the defendants to file an expedited response to the complaint and the motions for a temporary restraining order and protective order. The defendants responded to Complainant's motions (although they did not file an answer to the complaint), and Complainant filed several additional motions. In March 2013, after a hearing, the Subject Judge denied the motions, including the motion for a temporary restraining order and the motion for a protective order. Complainant appealed.

While the appeal was pending, Complainant continued to file numerous motions, including a motion for protection against retaliation, a motion to show cause, a motion for summary judgment, and a motion to amend the complaint. The Court of Appeals resolved the appeal in August 2013 by affirming the Subject Judge's decision to deny the temporary restraining order and the protective order. Most recently, in January 2014, the Subject Judge granted Complainant's motion to amend the complaint and directed that a new complaint be filed and served on the defendants. The matter remains ongoing.

In this complaint of judicial misconduct, Complainant alleges that "[t]here has been obvious prejudice, bias, usage of his office duties, usage of the court to favor the government defendants and deny the plaintiff his rights under the constitution. . . ." Specifically, Complainant alleges that, although he filed his civil rights complaint "more

than 12 months ago,” “[t]o date no answer or response has been filed by any of the defendants and [the Subject Judge] refuses to order a response, to rule on my motions for default, summary judgment, a show cause as to why default has not been issued or as to why the defendants are permitted to ignore the Rules of Civil Procedure.”

As an initial matter, to the extent any of Complainant’s allegations pertain to the prison officials named as defendants in his civil rights proceeding, those individuals are not covered by the Judicial Conduct and Disability Act. Accordingly, allegations against them will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The focus of the complaint of misconduct is essentially that the Subject Judge has improperly delayed ruling on Complainant’s motions. A claim of delay in a single proceeding may qualify as cognizable misconduct only where “the allegation concerns an improper motive in delaying a particular decision. . . .” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Here, Complainant alleges that the delay is attributable to bias in favor of the defendants.

As a factual matter, however, Complainant has not established undue delay in the progress of his case. The mere fact that the case has been pending for more than a year does not constitute unreasonable delay, particularly under the circumstances. Specifically, Complainant has chosen to file numerous submissions with the District Court, which have taken substantial time to resolve. In addition, Complainant filed an interlocutory appeal, during which time the District Court ceded jurisdiction to the Court of Appeals and could

not act. Even now, the District Court is awaiting Complainant's amended complaint, which Complainant himself sought leave to file but has not timely submitted to the Court. Thus, Complainant's allegations of delay are frivolous and unsupported by evidence that would raise an inference that misconduct has occurred.¹ They are therefore dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Next, to the extent Complainant alleges misconduct because the Subject Judge has not granted a default judgment in his favor, such allegations are merits-related. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such claims are not appropriately raised in a judicial misconduct proceeding. 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). Because these allegations are

¹ In addition, although Complainant alleges that the Subject Judge "refuses to rule" on his motions for summary judgment and for entry of a default, the record refutes these claims. The Subject Judge considered motions for summary judgment and for entry of a default filed in January and February 2013, and entered orders in February and March 2013 that resolved them. Any disagreement with those orders is merits-related and not cognizable as misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant has filed additional motions seeking similar relief, but the Subject Judge has since granted Complainant's request to file an amended complaint.

merits-related, they are not cognizable in this proceeding and are dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, as previously noted, Complainant has yet to file an amended complaint. As a practical matter, the Subject Judge cannot grant a default judgment in Complainant's favor when Complainant has not filed his amended complaint and the defendants therefore have not yet had an opportunity to file a response to it. Accordingly, these allegations also are subject to dismissal as frivolous and 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)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant alleges that the Subject Judge is biased against him. This claim, however, is based in part upon the alleged delay, which, as previously discussed, lacks a factual basis, and in part upon the Subject Judge's alleged failure to grant a default judgment, which, as previously discussed, is merits-related. Complainant has offered nothing more to substantiate his bias claim, and the record reveals no evidence of bias. Accordingly, Complainant's remaining allegations are dismissed as frivolous and 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)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).²

s/ Theodore A. McKee
Chief Judge

² In addition to the complaint, Complainant filed an additional document containing allegations not made under penalty of perjury as required by Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I have considered these allegations under Rule 5 and conclude that they do not provide “reasonable grounds for inquiry” into the existence of judicial misconduct. Accordingly, I decline to identify any complaints based upon these allegations.

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ORDER

(Filed: February 20, 2014)

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)(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 clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk 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 Clerk’s Office 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: February 20, 2014