

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90051

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 11, 2016)

PRESENT: SMITH, 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 complains that the Subject Judge denied his motion for summary judgment as "prematurely filed." Complainant further complains that "the screening process is still not complete exceeding 180 days." These allegations, including Complainant's allegations of delay, are plainly merits-related and are not cognizable under the Judicial Conduct and Disability Act. See 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 3(h)(3)(B), 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"). 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).

In any event, Complainant’s allegations are without merit. As stated in the Subject Judge’s opinion, Complainant’s motion was denied because he “prematurely filed a motion for summary judgment . . . prior to the court screening the complaint and determining whether process should issue . . .” The docket reflects that Complainant’s civil action was initially filed in another district and was transferred to the Subject Judge’s district just one month prior to Complainant’s filing of the motion in question. The Subject Judge ruled on his motion two days after it was filed. Furthermore, the Subject Judge has since issued a memorandum opinion and order dismissing the underlying civil complaint for failure to state a cause of action, with leave to amend. Accordingly, Complainant’s allegations of misconduct 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.

To the extent Complainant alleges that the Subject Judge had an improper motive for her putative delay, Complainant’s allegations of misconduct are likewise dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. Id.

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

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: October 11, 2016)

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.

s/ D. Brooks Smith
Chief Judge

Dated: October 11, 2016