

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90083

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 8, 2017)

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 (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 state prisoner who has been held in punitive segregation for nearly seventeen years. In December 2010, he filed an extremely lengthy pro se civil

rights complaint concerning his experiences in four separate state prisons. He named more than one hundred defendants. The matter was assigned to the Subject Judge, who issued an order in November 2011 directing that the defendants be served. After service, several groups of defendants moved to dismiss the complaint. Rather than respond to the motions, Complainant sought to amend the complaint. The Subject Judge granted the request. Although Complainant twice attempted to amend the complaint, he failed to comply with the Subject Judge's directives, including instructions to allege personal involvement by each defendant and to include only related claims and parties.

In August 2014, the District Court dismissed the complaint for failure to prosecute. Complainant appealed. In August 2016, the Court of Appeals determined that the District Court abused its discretion in dismissing the complaint. It therefore vacated the dismissal and remanded for further proceedings. In January 2017, the Subject Judge issued an order conditionally granting Complainant's motion for the appointment of counsel and staying the matter pending efforts to locate pro bono counsel. Because pro bono counsel was not located, Complainant recently has been directed to file a pro se amended complaint.

This complaint of judicial misconduct presents a claim of undue delay. Complainant alleges that it "took the court over a year to get the complaint served" and that it "takes, on average, 3-4 months to rule on any motion. That means at least a year passes before parties even get past the motion to dismiss stage." Complainant further contends that, due to the pendency of his civil rights action, he will continue to remain in

punitive segregation and that “I can’t refile an injunction motion based on any complaint.” Complainant alleges, “I am stuck in a court that doesn’t properly docket filings, systematically places pro se/African American litigants filings on the ‘back burner,’ takes months for almost any ruling, lacks people resources to expedite litigation etc.”

Upon review, it is apparent that there have been periods of delay in Complainant’s case. While Complainant’s frustration is understandable, delay generally is not cognizable as judicial misconduct. A claim of delay effectively poses a challenge to the merits of official actions by the judge – *i.e.*, the decision to assign a lower priority to a particular case. Rule 3 Commentary, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *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*.

Typically, claims of undue delay should be addressed on the merits in the context of a legal proceeding – for instance, in a motion filed in the ongoing District Court proceeding or via a petition for a writ of mandamus in the Court of Appeals. A claim of delay in a single case may qualify as cognizable judicial misconduct only if “the allegation concerns an improper motive in delaying a particular decision” Rule 3(h)(3)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant alleges improper motive in the form of racial bias on the part of the Subject Judge. He does not,

however, provide evidence for this allegation beyond the delay itself. Such circular reasoning is insufficient to support a claim of judicial misconduct.

There is nothing in the record to substantiate the allegation that any delay in Complainant's case has been the result of bias on the part of the Subject Judge. Indeed, the record reflects that some delay has been attributable to actions taken by the Complainant himself. For instance, considerable periods were consumed by fully briefing two separate motions for a preliminary injunction, each of which Complainant subsequently voluntarily withdrew.¹ In addition, substantial time has been devoted to awaiting Complainant's as-yet-unsuccessful efforts to properly amend his complaint. And finally, Complainant's initial decision to incorporate claims concerning multiple prisons and more than one hundred defendants presents case management challenges that are inherently time-consuming. In sum, because there is no evidence to substantiate Complainant's allegations of racial bias, Complainant's allegations are subject to dismissal as unsupported by evidence that would raise an inference that misconduct has occurred. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, to the extent Complainant requests that his civil rights proceeding be transferred to a different District Court within this Circuit, no action will be taken on Complainant's request. This is a confidential administrative proceeding limited to issues

¹ Although Complainant alleges that he cannot file a motion seeking an injunction, there does not appear to be anything in the record prohibiting him from filing such a motion.

concerning judicial misconduct or disability. Motions seeking substantive legal relief must be filed in the appropriate court proceeding. Complainant filed a motion to transfer his case in the context of his civil rights action, and the Subject Judge denied that motion. Any challenge to the Subject Judge's ruling is merits-related and therefore is not cognizable as judicial 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*.

Based on the foregoing, the complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90083

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: March 8, 2017)

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: March 8, 2017