

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90010

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 18, 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).

In 2014, Complainant filed a pro se civil rights complaint on behalf of herself and her deceased husband’s estate, concerning an incident two years prior in which state

officials entered the couple's home and allegedly falsely imprisoned Complainant's husband. The matter was assigned to a District Judge and Magistrate Judge, neither of whom is a Subject Judge of this complaint. Complainant obtained counsel and counsel eventually filed a second amended complaint, but counsel later withdrew and Complainant again proceeded pro se.

In August 2016, the matter was reassigned to the Subject Judge. The defendants filed motions for summary judgment; Complainant moved to strike defendants' motion and cross-moved for summary judgment. In March 2017, the Subject Judge entered a memorandum opinion and order denying Complainant's motions and granting summary judgment in favor of the defendants. Complainant moved to reopen her case and to disqualify the Subject Judge. She also filed a notice of appeal. The Subject Judge terminated the motion to reopen, granted Complainant additional time in which to file a motion for reconsideration, and denied the recusal motion. Complainant then filed a motion for reconsideration, which is pending. Complainant also has filed a petition for a writ of prohibition in the Court of Appeals, in which she seeks the Subject Judge's recusal. The petition is pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge unduly delayed ruling upon her cross-motion for summary judgment and reply in support, which were filed in August and September 2016. In January 2017, she wrote a letter to the Subject Judge seeking to have consideration of these submissions expedited.

The Subject Judge issued his memorandum opinion and order approximately two months later, in mid-March 2017. Complainant alleges “apparent bias” by the Subject Judge toward Complainant and her husband because “[i]naction is an action which can be interpreted as inhumane,” and further contends that the alleged delay violates the Code of Conduct for United States Judges. *See* Canon 3(A)(5), Code of Conduct for United States Judges (advising judges to “dispose promptly of the business of the court”).¹ Complainant also alleges that the Subject Judge suffers from a disability because “he seems to have difficulty keeping up with the duties of the job.”

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*. A claim of delay in a single case may qualify as cognizable judicial misconduct only if “the allegation concerns an improper motive in

¹ The Code of Conduct for United States Judges is designed to provide guidance to judges, but is not a set of disciplinary rules. “Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.” Commentary on Rule 3, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

delaying a particular decision” Rule 3(h)(3)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

As a factual matter, the record does not support Complainant’s claim of undue delay. The motions before the Subject Judge at the time were not fully briefed until mid-September 2016. Contrary to Complainant’s arguments, a period of less than six months in resolving several dispositive motions is neither unusual nor excessive. Accordingly, because the allegation that the Subject Judge is unable to discharge the duties of his office is entirely lacking in support, Complainant’s allegation that the Subject Judge suffers from a disability will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Moreover, although Complainant alleges improper motive in the form of bias on the part of the Subject Judge, she does not provide evidence for this allegation beyond the alleged delay itself. Such circular reasoning is insufficient to support a claim of judicial misconduct. Thus, even if the record could support a claim of undue delay (which it cannot), Complainant’s allegations of improper motive 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*.

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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ORDER

(Filed: May 18, 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: May 18, 2017