

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90061

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 21, 2018)

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 2015, Complainant, a state prisoner, filed a pro se petition for a writ of habeas corpus presenting ten claims for relief. The state filed its response in 2016. Complainant

moved at least six times throughout 2016 and 2017 to supplement and amend the petition. The Subject Judge granted Complainant permission to supplement the petition in order to clarify the claims he already raised. Recently, the Subject Judge entered a memorandum opinion and order denying the habeas petition as meritless, non-cognizable, and procedurally barred. Complainant appealed, and the appeal is pending.

In this complaint of judicial misconduct, Complainant alleges that “the Subject Judge’s . . . 33 month delay . . . in adjudicating [Complainant’s] pending [petition] . . . is de facto punitive” and “manifestly unjust.” Complainant argues that the alleged delay in resolving the habeas petition was intentional on the part of the Subject Judge and has exacerbated the injury to Complainant caused by his allegedly unconstitutional incarceration.

“An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.” Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceeding*. 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*. Generally, a claim of delay is merits-related; such a claim effectively poses a challenge to the merits of a decision to assign a lower priority to a particular case. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*; Rule 3 Commentary, *Rules for Judicial-*

Conduct and Judicial-Disability Proceedings. Thus, 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’s habeas proceeding was ongoing for a substantial amount time. It is apparent, however, that Complainant’s numerous requests to amend and supplement the petition throughout 2016 and 2017 contributed to the delay. As a practical matter, the Subject Judge required additional time to consider each new submission. More importantly, although Complainant vaguely alleges that the Subject Judge may have had an improper motive, Complainant offers nothing whatsoever to substantiate such a claim. Indeed, in an unsworn document in support of the complaint, Complainant speculates that the delay in his proceeding could just as likely be attributable to a “heavy case load” as to “a predisposed aversion toward sex offenses.” Complainant further states that he “wish[es] not to infer [that the Subject Judge] is bias[ed] or deliberately indifferent” and acknowledges that he cannot “read [the Subject Judge’s] mind/heart.”

In other words, Complainant observed nothing to indicate an improper motive for any delay in his habeas proceeding, and a careful review of the record also reveals nothing to substantiate a claim of improper motive. Mere speculation and conjecture are inadequate to support a claim that the Subject Judge has engaged in judicial misconduct. Accordingly, this claim is subject to dismissal as 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)(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 21, 2018)

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 21, 2018