

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90215

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 20, 2018)

PRESENT: McKEE, *Circuit Judge*.¹

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Circuit Judge (the “Subject Judge”).² 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

¹ Acting as Chief Judge pursuant to Rule 25(f), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (assigning the Chief Judge’s duties to the “most-senior active circuit judge not disqualified”).

² Complainant also presents allegations against a District Court Clerk. This individual is not a federal judge and therefore is not subject to the Judicial Conduct and Disability Act. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Because allegations against non-covered individuals are beyond the scope of this proceeding, such allegations will not be addressed in this opinion.

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 pro se appellant. After he filed his pro se opening brief, the appellees verbally sought a two-week extension to file their responsive brief, which the Clerk's Office granted. Thereafter, the appellees moved in writing for an additional thirty-day extension. Complainant filed an opposition to the motion. The Subject Judge then granted the appellees' motion. The appeal has since been fully briefed and is pending before the Court of Appeals.

This complaint of judicial misconduct is based entirely upon Complainant's disagreement with the Subject Judge's order granting the appellees an additional thirty days in which to file their responsive brief. Complainant alleges that the Subject Judge's order "blatantly ignor[ed] the rules" because, under Complainant's interpretation, the rules afforded the Subject Judge no discretion to grant an extension. Complainant accuses the Subject Judge of conspiring with the Clerk and counsel for the appellees to cause undue delay in his appeal. In addition, Complainant alleges that he contacted the Chief Judge by letter to raise his concerns, and the Chief Judge "obviously ignored" the letter because, according to Complainant, he "had no intention of investigating" the matter.³

Because Complainant's allegations call into question the Subject Judge's ruling on the extension motion, they are largely merits-related. *See* Rule 3(h)(3)(A), *Rules for*

³ Complainant did not name the Chief Judge as a Subject Judge of this complaint. Nonetheless, the Chief Judge has determined that the circumstances warrant his disqualification pursuant to Rule 25(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Judicial-Conduct and Judicial-Disability Proceedings (“An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.”).

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*.

Accordingly, all merits-related allegations are subject to dismissal.

With regard to Complainant’s allegations of undue delay, 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*. Here, as a factual matter, the record reveals no period of undue delay in Complainant’s appeal. An extension of thirty days in which to file an appellate brief is neither unusual nor excessive. Moreover, there is nothing in the record to substantiate Complainant’s claim that the purported delay is the result of a conspiracy involving the Subject Judge. Accordingly, these allegations are subject to dismissal as frivolous and 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)(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)(i), (ii), and (iii).

s/ Theodore A. McKee
Circuit Judge

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ORDER

(Filed: December 20, 2018)

PRESENT: McKEE, *Circuit Judge*.¹

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.

¹ Acting as Chief Judge pursuant to Rule 25(f), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (assigning the Chief Judge's duties to the "most-senior active circuit judge not disqualified").

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/ Theodore A. McKee

Circuit Judge

Dated: December 20, 2018