

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90221

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 12, 2019)

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 has been a defendant in a federal criminal proceeding since 2012. A jury convicted him of multiple counts and, in 2014, the presiding District Judge sentenced

him to a lengthy term of imprisonment. Complainant appealed. In 2016, the Court of Appeals affirmed the judgment.

In June 2016, Complainant filed a motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255, which he supplemented in September 2016. In February of the following year, the presiding District Judge recused himself, and the matter was reassigned to the Subject Judge. The Subject Judge ordered the Government to respond to the § 2255 motion, which it did in November 2017, and Complainant filed a reply to the response in December 2017. The § 2255 motion, which is now fully briefed, remains pending. Complainant has since filed a motion for discovery and for the appointment of counsel, which also remain pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge has unduly delayed ruling on his § 2255 motion. Complainant further alleges that the Subject Judge “has been deliberately imposing prejudicial dilatory tactics in order to prevent defendant . . . from exposing court and public officials of numerous acts of malfeasance by deliberately refusing [to] render any rulings concerning defendant’s . . . § 2255 matters.”

Generally, delay does not constitute cognizable misconduct, as it effectively poses a challenge to merits of official actions by the judge – *i.e.*, the decision to assign a lower priority to a particular case. *See* Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.”); 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.¹ 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 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.* While Complainant’s § 2255 motion has been pending for a relatively lengthy period, Complainant offers no evidence whatsoever to support his subjective belief that the Subject Judge has intentionally delayed ruling due to an improper motive. The length of delay, without more, does not provide evidence that judicial misconduct has occurred. Accordingly, Complainant’s allegations are 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).

¹ Indeed, a claim of undue delay may be raised on the merits via a petition for mandamus filed in the Court of Appeals.

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: February 12, 2019)

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: February 12, 2019