

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90070

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 31, 2019)

PRESENT: SMITH, *Chief Judge*.

This complaint is 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. He filed a petition for a writ of habeas corpus in December 2014. The petition has been fully briefed since June 2017.¹ In September 2018, the Subject Judge ordered the matter to be removed from suspense and, in November 2019, directed the clerk of the state court to file the state court record by December 2019. The habeas petition remains pending.

This complaint of judicial misconduct alleges inordinate delay in resolving Complainant's habeas petition. Rule 4(b)(2) provides, “[c]ognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Rule 4(b)(2), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant's habeas petition has been fully briefed for over two years, which is a significant period of time. Complainant has not, however, alleged that this delay is attributable to an improper motive. Although Complainant vaguely states that the Subject Judge has engaged in “unethical conduct,” a careful review of the record reveals no basis for this claim. Any allegation of improper motive is therefore unsupported by evidence

¹ After filing the petition, Complainant requested to suspend the proceeding and moved for a continuance, which the Subject Judge granted. Complainant then filed a brief in support of the petition in May 2016. The state, which was granted two continuances, filed its answer to the petition in February 2017. Complainant sought a continuance to file his reply in support of the petition, and ultimately filed the reply in June 2017.

that would raise an inference that misconduct has occurred.² 28 U.S.C.

§ 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, Complainant's claim of delay in resolution of his habeas proceeding is non-cognizable and subject to dismissal. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *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

² In the absence of an improper motive, concerns of undue delay should be raised in an appropriate judicial proceeding, such as a petition for a writ of mandamus in the Court of Appeals pursuant to Fed. R. App. P. 21.

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ORDER

(Filed: December 31, 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: December 31, 2019