

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-20-90083 and 03-21-90005

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 17, 2021)

PRESENT: SMITH, *Chief Judge*.

The present complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, by an attorney against a United States District Judge (the “Subject Judge”). For the reasons discussed below, the complaints 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).

The complaint docketed as J.C. No. 03-20-90083 alleges that the Subject Judge is biased against Complainant and has delayed ruling on her motion to withdraw as counsel. I asked the Subject Judge to file a response to the complaint because it was filed by an

attorney.¹ In the meantime, Complainant filed a second complaint against the same Subject Judge: J.C. No. 03-21-90005.² Complainant's second complaint consists of one paragraph making vague references to "problems" and "hostility" in another civil suit pending before the Subject Judge due to an ongoing and unrelated state court divorce proceeding between Complainant and her husband, an attorney. Complainant also attached a transcript from a hearing before the Subject Judge and copies of multiple docket sheets. As both complaints concern the same Subject Judge, they will be addressed in the same opinion.

In the first instance, Complainant's allegations of delay are subject to dismissal because they are merits-related and not cognizable under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("Cognizable 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."). Complainant's merits-related allegations of delay are, therefore, dismissed. Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Furthermore, the documents attached by Complainant to her complaints provide no evidence of improper motive or habitual delay. Specifically, as the Subject Judge explained in his response to the complaint filed in J.C. No. 03-20-90083, Complainant's

¹ Pursuant to the applicable statute, a copy of the Subject Judge's response was not provided to Complainant.

² I did not request a response from the Subject Judge regarding Complainant's second complaint.

motion to withdraw was not unopposed, as she claims. Indeed, Complainant's own client opposed the motion to withdraw. The applicable local rule provides that the Court, "may refuse to grant a motion for leave to withdraw unless substitute counsel has entered an appearance." To date, no substitute counsel has entered an appearance. Furthermore, the Subject Judge recently issued an order staying the proceedings and providing additional time for Complainant's client to retain new counsel. A similar order was also recently issued in the civil suit underlying J.C. No. 03-21-90005, where Complainant has also filed a motion seeking to withdraw as counsel. Under these circumstances, there is no evidence of improper motive or habitual delay and, therefore, Complainant's allegations of delay and bias are also subject to dismissal as frivolous and unsupported by evidence sufficient to 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*.

Complainant's remaining allegations are likewise subject to dismissal. Other than Complainant's baseless speculation, there is no evidence that she is facing "hostility" from the Subject Judge due to her pending divorce from an attorney who has also practiced before the Subject Judge. The transcript and docket sheets provided by Complainant have been reviewed and they provide no evidence of judicial misconduct. The fact that Complainant's husband has represented clients in cases that were assigned to the Subject Judge in the past does not demonstrate that the Subject Judge is biased against Complainant or in any way hostile to her. Complainant's remaining allegations are

therefore dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. *Id.*

Based on the foregoing, the two present complaints will be dismissed under 28 U.S.C. § 352(b)(1)(A) (ii) and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: March 17, 2021)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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: March 17, 2021