

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-21-90032

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 23, 2021)

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, a plaintiff in a civil suit that was pending before the Subject Judge, alleges that years passed without a “response” by the Subject Judge and that “[p]ublicly available information indicates that the delay of this case is consistent with a long history

of other case delays” Complainant alleges that “[p]rolonged delay imposes a bias counteracting fairness.”

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.” Rule 4(b)(2), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*; see also Commentary on Rule 4 (“a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”). Here, Complainant provides no evidence of an improper motive for the Subject Judge’s putative delay. In any event, a review of the record reflects that the complaint in the matter in question was filed in early 2018, a motion to dismiss was filed in March 2018, and a response was filed in April 2018. Defendants filed a motion for a protective order in 2019 and later sought permission to file a reply to plaintiff’s response, which the Subject Judge granted. There was a period from July 2019 until 2021 when no judicial orders were entered, but in April 2021, the Subject Judge entered an order denying defendants’ motion to dismiss. This order was issued approximately two weeks before the present complaint of judicial misconduct was received and docketed. Thereafter an order was entered reassigning the civil suit to another district judge and the civil suit was dismissed with prejudice because the parties reached a settlement. Accordingly, there is no evidence of delay for an improper motive and the allegations are dismissed. 28 U.S.C.

§ 352(b)(1)(A)(ii), (iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent Complainant contends that the Subject Judge has engaged in “habitual delay,” he offers no evidence in support of his claims other than a vague reference to “[p]ublicly available data” and an unidentified case where Complainant contends that “delay exceeded seven years.” Complainant’s allegations fall far short of demonstrating the existence of habitual delay or any other type of judicial misconduct. Complainant’s allegations are therefore dismissed 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: August 23, 2021)

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: August 23, 2021