

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

May 10, 2022

Chief Judge Diane S. Sykes

No. 07-22-90008

IN RE COMPLAINT AGAINST A JUDGE

MEMORANDUM AND ORDER

The complainant, through his attorney, filed a misconduct complaint against the judge who presides over his class-action lawsuit. The complainant alleges that the judge has delayed ruling on a motion to dismiss. He claims that his case has “languished for almost three years despite a very straightforward theory of liability and motion to dismiss.” He also alleges that the judge is biased based on comments made during hearings and in written orders and because the judge previously was a partner at defense counsel’s law firm. The complainant filed a recusal motion based on the prior affiliation with the defense firm, but the judge denied it.

This complaint does not raise any cognizable misconduct. Allegations directly related to the merits of a judge’s rulings are not proper grounds for a misconduct complaint. 28 U.S.C. § 352(b)(1)(A)(ii). “Any allegation that calls into question the correctness of an official action of a judge ... is merits related.” STEPHEN BREYER ET AL., IMPLEMENTATION OF THE JUDICIAL CONDUCT AND DISABILITY ACT OF 1980: A REPORT TO THE CHIEF JUSTICE 145 (2006). To the extent that the judge expressed any skepticism about the complainant’s theory of the case, the comments were directly related to the merits of the case and are not grounds for a misconduct complaint. Allegations of delay are likewise considered merits related and are not cognizable under the Judicial Conduct and Disability Act. *See* RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. 4(b)(1) (“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.”). I have reviewed the docket and found no evidence of improper motive or habitual delay on the part of the judge. The record reflects that since the case’s inception, the original judge retired and the matter was reassigned to the subject judge; 19 related cases have been filed and consolidated before the subject

judge; numerous adjustments to the briefing scheduled have been ordered; several motions to supplement have been ruled upon; and the case has more than 150 docket entries. The plaintiffs have been granted leave to amend their complaint multiple times and currently are proceeding on their 57-page third amended complaint. The motion to dismiss is fully briefed, and all parties are awaiting the judge's ruling. There is no allegation of a pattern of delay by the judge in other cases and thus no cognizable claim of habitual delay.

Moreover, the allegations of bias are wholly unsupported and likewise must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); *see* RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. 11(c)(1)(D). Adverse rulings alone are not proof of bias. Nor is skepticism about a party's legal theory. Denying a recusal motion and expressing doubt about the plaintiff's theory of the case are not grounds for a misconduct complaint.

For the foregoing reasons, this complaint is dismissed pursuant to § 352(b)(1)(A)(ii) and (iii). The complainant may petition the Judicial Council of the Seventh Circuit for review of this order in accordance with Rule 18(b) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. 28 U.S.C. § 352(c); *see* RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. 11(g)(3). A petition for review must be filed in the clerk's office of the United States Court of Appeals for the Seventh Circuit not later than 42 days of the date of this order.