

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

June 28, 2022

Chief Judge Diane S. Sykes

No. 07-22-90033

IN RE COMPLAINT AGAINST A JUDGE

MEMORANDUM AND ORDER

The complainant, an attorney, filed a misconduct complaint against the judge who at the time of the complaint was presiding over his client's Social Security case. The complainant accuses the judge of habitual delay in processing Social Security cases and attributes the delay to improper motive. At the time the misconduct complaint was filed, more than three years had passed since the attorney's case was fully briefed, but no decision had been issued. In support of his claim, the complainant identified two additional Social Security cases with motions that had been pending without decision for more than three years. The complainant alleges that the judge intentionally delays ruling in these cases to coerce the parties into consenting to the magistrate judge's jurisdiction. Since the filing of the misconduct complaint, the judge has ruled on the pending motions and resolved the three cases identified by the complainant.

Following my review of the complaint, I determined that a limited inquiry, as permitted by 28 U.S.C. § 352(a) and Rule 11(b) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, was appropriate and requested that the judge provide a response. In response the judge acknowledged that these cases had been pending for several years but noted that until recently, the motions were not prioritized because they did not appear on the Civil Justice Reform Act report, which he uses to track his pending motions.

The Civil Justice Reform Act of 1990 ("CJRA") requires the Director of the Administrative Office of the United States Courts under 28 U.S.C. § 476 to prepare a semiannual report listing by district judge and magistrate judge all motions pending more than six months, bench trials submitted more than six months, bankruptcy appeals pending more than six months, Social Security appeals pending more than six months, and civil cases pending more than three years. The reporting requirements are designed to help

reduce both costs and delays in civil litigation in the district courts as well as evaluate demands on the district courts' resources.

A Social Security appeal becomes reportable when the agency transcript or administrative record has been on file for at least six months. When the transcript or administrative record is filed, CM/ECF should automatically calculate the amount of time that the administrative record has been pending. When the administrative record has been pending for six months, the case should appear in the Social Security appeals section of the CJRA report.

Using CM/ECF, I confirmed that the cases and motions highlighted by the complainant were in fact pending before the judge; however, I also reviewed the CJRA report and confirmed that none of the cases or motions appeared on the judge's CJRA report. Further, based on the most recent CJRA report, no Social Security appeals appeared as pending in the district in which the judge sits.

To better understand the inconsistency between the individual dockets and the semiannual reports, I contacted the clerk of the court. The clerk confirmed that in spring 2022, prior to the filing of the instant complaint, the court discovered that CM/ECF was not calculating the amount of time that the administrative record had been pending. The clerk's office determined that this was the result of a coding error, and Social Security appeals pending for more than six months were mistakenly excluded from the semiannual CJRA report to the Administrative Office. The error impacted the reporting of both cases and motions. The clerk also confirmed that many judges use their CJRA reports to monitor their cases and prioritize pending motions. The court recently notified the district's judges of the error and corrected the issue. Beginning with the next reporting period ending September 30, 2022, all Social Security appeals where the transcript or administrative record has been pending for six months will appear on each judge's CJRA report.

Under Rule 4(b)(2) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, an allegation about delay in rendering a decision is not cognizable misconduct "unless the allegation concerns an improper motive or habitual delay." Here, there is no evidence, other than the delay itself, that the judge acted with an improper motive. The clerk confirmed that these cases did not appear, as they should have, on the reports that many judges use to track their cases and that the court has modified CM/ECF to fix the reporting errors. Further, the judge acknowledged that the cases and motions had been pending for several years and promptly addressed them after the court identified the CM/ECF glitch. The judge also noted that going forward, chambers would track cases and motions in multiple ways rather than relying on the CJRA report.

Based on this initial review, I conclude that the complaint must be dismissed pursuant to 28 U.S.C. § 352(b)(1)(B) because my limited inquiry demonstrates that the

allegations of judicial misconduct “are conclusively refuted by objective evidence.” *See also* RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. 11(c)(1)(A) (requiring the dismissal of a complaint if it “alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts”). The complainant’s concerns about a three-year decision delay are understandable. However, the problem has been remedied, and the complainant’s assertion of improper motive is refuted by objective evidence. No evidence raises an inference that misconduct has occurred.

For the foregoing reason, the complaint is dismissed pursuant to § 352(b)(1)(B). 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.