

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-21-90071

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 24, 2022)

PRESENT: CHAGARES, 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, an attorney, alleges that the Subject Judge “refuses to grant unopposed motions to [her].” Specifically, Complainant identifies a case in which she filed two motions for extensions of time that the Subject Judge did not resolve, a case in

which she filed motions to withdraw as counsel that were denied, and a case in which the Subject Judge did not enter a judgment after a favorable jury verdict. Complainant alleges that “[i]t is impossible to practice law in front of [the Subject Judge].”

To the extent Complainant’s allegations reflect her disagreement with the Subject Judge’s rulings on her motions to withdraw as counsel, the allegations are merits related. Merits-related allegations do not constitute cognizable misconduct. Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”). Complainant’s merits-related allegations are 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.

In addition, it appears that the Subject Judge resolved two of the three allegedly unresolved matters to which the complaint refers. Specifically, the favorable jury verdict was entered as a judgment and the first motion for an extension of time was dismissed as moot after Complainant filed the brief for which she sought an extension.¹ Accordingly, allegations of a failure to rule in these matters are subject to dismissal as frivolous and 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)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

¹ The second motion for an extension of time remains pending, although it appears that Complainant since has filed the brief for which she sought an extension as well.

Complainant's allegations concerning an alleged failure to rule may also be understood as a claim of undue delay in ruling on certain motions. As a factual matter, however, Complainant does not identify any motion, unopposed or otherwise, that has been or was pending for an excessive length of time. Accordingly, such allegations are subject to dismissal as frivolous and 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)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, even if there had been a lengthy period of delay, “[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. There is no indication that any purported delay in ruling on Complainant's motions is attributable to an improper motive and Complainant has not identified any habitual delay in a significant number of cases. Accordingly, the claim is not cognizable and is 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.

Finally, Complainant's non-merits-related allegations of judicial misconduct are groundless. A review of the record does not reveal any basis for concluding that it is “impossible” for Complainant to practice before the Subject Judge. This allegation is subject to dismissal as frivolous and 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)(C), (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). It is noted that Complainant previously filed two misconduct complaints naming the Subject Judge. J.C. Nos. 03-20-90083; 03-21-90007. Those complaints were dismissed as merits-related, unsubstantiated, and frivolous. Complainant therefore is cautioned pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings that continued filing of repetitive, harassing, or frivolous complaints may constitute abuse of the judicial misconduct complaint procedure and may result in the imposition of filing restrictions.²

s/ Michael A. Chagares

Chief Judge

² Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides:

A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

(Filed: January 24, 2022)

PRESENT: CHAGARES, 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/ Michael A. Chagares
Chief Judge

Dated: January 24, 2022