

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90018

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 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 (“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).

In his pro se civil suit, Complainant alleged that the executor engaged in fraud, self-dealing, and breach of fiduciary duty with respect to administration of an estate. Complainant’s allegations in the present complaint of judicial misconduct concern the

Subject Judge’s decision adopting the Magistrate Judge’s Report and Recommendation and dismissal of Complainant’s civil suit.¹ Complainant also complains that the Subject Judge did not hold a hearing. Complainant’s allegations are related to the merits of judicial rulings and are therefore not cognizable. 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.”); see also 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Notably, Complainant filed an appeal of the Subject Judge’s decision and a panel of Third Circuit judges affirmed.²

In addition, Complainant contends that the Subject Judge should have answered a motion filed by Complainant “6 months ago” so that the “‘warped’ epistemology used to decline Federal Question Jurisdiction could have been reversed or vindicated” Allegations of delay are considered merits-related and non-cognizable. See also Rules 4(b)(2) (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”),

¹ Complainant does not name the Magistrate Judge as a Subject Judge, but his allegations have nonetheless been considered pursuant to Rule 5. I decline to identify a complaint based on Complainant’s merits-related allegations. Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant also makes allegations against the executor, an attorney, and a state court judge. The Judicial Conduct and Disability Act, however, only applies to federal judges. 28 U.S.C. § 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

² The panel affirmed and modified the judgment to reflect that the dismissal of the complaint was without prejudice.

11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. To the extent Complainant suggests that the Subject Judge had an improper motive for his putative delay, his allegations are dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct occurred.³ 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)(i), (ii), (iii).

s/ Michael A. Chagares
Chief Judge

³ There is no allegation of habitual delay in a significant number of unrelated cases.

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ORDER

(Filed: May 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)(i), (ii), (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: May 24, 2022