

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90094

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 6, 2023)

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).

Complainant, a frequent pro se litigant, filed several civil complaints that were assigned to the Subject Judge. Complainant presents various allegations of misconduct that relate to those proceedings. Complainant alleges, among other things, that the Subject

Judge: mis-docketed two complaints under an incorrect statute, delayed the progress of one proceeding, improperly dismissed a complaint, failed to appoint counsel for Complainant, unfairly ordered Complainant to re-file a complaint and a motion to proceed in forma pauperis, “disregarded” several motions, and refused to docket a complaint. Complainant contends that the Subject Judge’s failure to grant him relief in his civil cases has resulted in Complainant being punished, abused, and endangered. Complainant accuses the Subject Judge of numerous forms of judicial misconduct, including depriving Complainant of proper access to the courts, violating his constitutional rights, breaching the judicial oath, disturbing the peace, and engaging in high crimes and misdemeanors.

It is apparent that many of the allegations of the complaint are intended to challenge judicial rulings rendered in the course of Complainant’s civil cases, including the decision not to appoint counsel, the directive to re-file certain documents, the entry of judgment against Complainant, and the like.¹ Such allegations are merits related and 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.”). Merits-related allegations are subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii);

¹ The allegations relating to docketing do not implicate the Subject Judge. Docketing is handled by District Court clerk’s office staff, who are not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such allegations therefore will not be addressed in this opinion. It is noted, however, that the complaint that Complainant identifies as not filed appears to have been docketed after the complaint of misconduct was submitted.

Rules 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Rule 4(b)(2) provides that “[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. Complainant has not provided evidence of an improper motive on the part of the Subject Judge. Complainant’s claim of delay in one proceeding is therefore not cognizable as misconduct and is subject to dismissal on that basis. 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.

Complainant’s remaining allegations are unsubstantiated. Because the record does not lend support to Complainant’s claims of judicial misconduct, the allegations are subject to dismissal 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, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: February 6, 2023)

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), 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: February 6, 2023