

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90101

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 10, 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 filed a pro se complaint claiming discrimination and retaliation by his former employer. The matter was assigned to the Subject Judge, who issued a notice advising that the case was designated for placement into the District Court’s Alternative

Dispute Resolution (“ADR”) program. The defendants instead moved to compel arbitration pursuant to an employment agreement. Complainant opposed arbitration. The Subject Judge granted the motion, ordered arbitration, stayed the proceeding, and administratively closed the case. Complainant appealed. The appeal has been listed for possible dismissal due to a jurisdictional defect.

In this complaint of judicial misconduct, Complainant alleges that, in lieu of the ADR directive, the Subject Judge should have directed service of the complaint and summons. Complainant presents a number of concerns about the ADR process, including difficulties locating a neutral presider, burdensome monetary fees, order language implying that participation is mandatory, interference with the right to a jury trial, and inequities between geographic districts in use of the ADR program. Complainant also alleges that the Subject Judge unduly delayed ruling on the motion to compel arbitration and “removed indispensable parties from the case caption without explanation.” Finally, Complainant alleges that the Subject Judge, before taking the bench, was employed by a law firm that “was previously located in the same location” as a defendant law firm in his case. Complainant requests as relief that the Subject Judge be recused.

To the extent Complainant is attempting to collaterally challenge official judicial actions, including the Subject Judge’s directive regarding the ADR program, changes to the case caption, and the order compelling arbitration, these 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.”). “The misconduct procedure [under the Judicial Conduct and Disability Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges' rulings.” In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). Complainant's merits-related allegations are subject to dismissal.¹ 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 allegation of delay in ruling on the motion to compel arbitration is meritless. “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.” Rule 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Even apart from the absence of an allegation of habitual delay or improper motive on the part of the Subject Judge, briefing on the motion in question concluded approximately four months before the Subject Judge ruled. This is not, as a factual matter, a period constituting excessive delay. The claim is thus subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28

¹ Complainant requests recusal in this administrative proceeding. A review of the docket in the civil matter reveals that Complainant never filed a motion seeking that relief. A request for recusal must be presented to the presiding judge in the first instance. A substantive decision rendered on a recusal motion is merits-related and non-cognizable. See Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant implies the existence of a conflict of interest based on the Subject Judge's alleged past employment with a law firm that was once located in the same place as the defendant law firm in Complainant's case. The Subject Judge has been on the bench for more than a decade. Even assuming that the allegation is true, the alleged employment ended so long in the past that it does not give rise to a circumstance in which the Subject Judges' impartiality might reasonably be questioned. See, e.g., Canon 3(C)(1)(d), Code of Conduct for United States Judges (requiring disqualification where "the judge or the judge's spouse, or a person related to either within the third degree of relationship" is a party to the proceeding).² Complainant's allegation is therefore subject to dismissal because, even if true, it does not constitute conduct prejudicial to the effective and expeditious administration of the business of the courts, and because it is 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)(A), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

² The Code of Conduct for United States Judges is designed to provide guidance to judges but is not a set of disciplinary rules. "While the Code's Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act and these Rules, as interpreted and applied by judicial councils, subject to review and limitations prescribed by the Act and these Rules." Commentary on Rule 4, 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).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: February 10, 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)(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 10, 2023