

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90036

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 1, 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 is a pro se prisoner who contends that the Subject Judge has a disability because, in Complainant’s view, the Subject Judge has taken too long to rule on various motions and failed to act on his motion for default judgment. Complainant also

disagrees with the Subject Judge's decisions in various matters and alleges that the Subject Judge is biased.

Complainant plainly seeks to collaterally attack the Subject Judge's decisions in the present administrative proceedings. Merits related allegations, however, are not cognizable under the Judicial Conduct and Disability Act. 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. Accordingly, these allegations are subject to dismissal.

Complainant's allegations of delay are likewise subject to dismissal as merits related. 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" Rule 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings. In any event, the dockets for the cases cited by Complainant have been reviewed and there is no evidence of improper motive or habitual delay. Indeed, orders addressing summary judgment motions have been issued in two of Complainant's pending civil suits, another case has been referred to a prisoner mediation program, and in a fourth matter the Subject Judge issued an order requiring a response to an amended complaint. Accordingly, Complainant's allegations pertaining to any putative delay are dismissed. Id.; see also 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

To the extent Complainant alleges that the Subject Judge had an improper motive for any other actions, engaged in a conspiracy, or that the Subject Judge has a disability, his allegations are likewise subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred or that a disability exists. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant provides no support for his allegations other than his disagreement with the Subject Judge's decisions. Moreover, as discussed above, the records for the underlying civil actions have been reviewed and there is no evidence of judicial misconduct or a disability within the meaning of the Judicial Conduct and Disability Act.

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: September 1, 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: September 1, 2023