

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90058

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 28, 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 that follow, the complaint will be dismissed.¹

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).

¹ Complainant’s prior judicial misconduct complaint was dismissed in 2013. See J.C. No. 03-13-90009.

Complainant filed a lawsuit in late March 2023, and the case was assigned to the Subject Judge. In July, the Subject Judge granted the motion for leave to proceed in forma pauperis but dismissed the lawsuit under 28 U.S.C. § 1915(e)(2)(B) after concluding that it was frivolous and/or failed to state a claim. See id. § 1915(e)(2)(B)(i) and (ii). Complainant then submitted this judicial misconduct complaint in which he claimed that the Subject Judge delayed action in the case on account of bias against Complainant as a pro se litigant. However, this “claim of delay” is not cognizable and will be dismissed. See 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”), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. To the extent Complainant argues that the Subject Judge had an improper motive for the purported delay, Complainant presented no evidence—and a review of the record reveals none—that the Subject Judge harbored bias. In any event, Complainant did not experience an objective delay, given that he complains about a period of only a few months. Accordingly, the claim is also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as frivolous and unsupported by any evidence that would raise an inference that misconduct occurred.

Complainant also argued that the Subject Judge should have recused himself when Complainant’s May 2023 letter criticizing the Subject Judge was filed on the District Court docket instead of being transmitted directly to the Chief Judge of the District

Court.² Complainant speculates that the Subject Judge saw the letter and was “potentially” biased against Complainant as a result. A challenge to the failure to recuse qualifies as a merits-related allegation, and such claims do not constitute cognizable misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii); 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 allegation would otherwise be subject to dismissal as frivolous and unsubstantiated because Complainant offers mere speculation rather than any supporting evidence sufficient to raise an inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant supplemented his section 351 proceedings with a letter in which he suggested that there is an “inference” that the Subject Judge dismissed the lawsuit because Complainant filed this judicial misconduct complaint. This claim will be dismissed for frivolousness and lack of evidentiary support because Complainant’s judicial misconduct complaint was filed after his lawsuit had already been dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. In any event, the record shows that Complainant’s lawsuit was dismissed because his claims did not survive screening under 28 U.S.C. §

² Insofar as Complainant also appears to raise the actions of the Clerk for consideration in this action, that concern will not be addressed because complaints against court employees are not cognizable in section 351 actions. See Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

1915(e)(2)(B). “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).

Thus, to the extent this challenge constitutes a merits-related allegation, it must be dismissed. 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.

For the foregoing reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

Michael A. Chagares
Chief Judge

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ORDER

(Filed: September 28, 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.

Michael A. Chagares
Chief Judge

Dated: September 28, 2023