

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90087

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 9, 2024)

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 complains about the Subject Judge’s decisions in his civil suit. Complainant complains that the Subject Judge did not rule in his favor and denied his

recusal motion.¹ He also complains that the Subject Judge engaged in delay, denied a motion for a speedy hearing, denied a motion for reconsideration, and denied a motion to proceed in forma pauperis. Complainant further alleges that the Subject Judge discriminated and retaliated against him and engaged in ex parte communications, among other allegations.

Complainant plainly seeks to collaterally attack the Subject Judge's decisions in the present administrative proceedings. For example, Complainant raised many of the same arguments regarding the Subject Judge's past employment and his wife's employment in his unsuccessful recusal motions. 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 also appears to contend that the Subject Judge engaged in delay. 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

¹ Complainant also complains about the putative actions of state court employees, attorneys, a mortgage company, a bank, and state court judges, among others. Only allegations against federal judges are cognizable under the Judicial Conduct and Disability Act. Accordingly, these allegations cannot be addressed here. Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

decision or habitual delay in a significant number of unrelated cases.” Rule 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The dockets cited by Complainant have been reviewed and there is no evidence of undue delay or delay for an improper motive. In addition, there is no evidence of habitual delay. The records of the two unrelated cases described by Complainant have also been reviewed and they do not support his claims of habitual delay. Accordingly, these allegations are dismissed. See 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 rulings or engaged in ex parte communications, retaliation, or other judicial misconduct, his allegations are likewise subject to dismissal as frivolous and 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)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant’s only support for his allegations is his disagreement with the Subject Judge’s decisions and such allegations are not cognizable. Furthermore, the underlying case records have been reviewed and there is no evidence of judicial misconduct. Indeed, although Complainant complains about a “conflict of interest” because the Subject Judge allegedly worked with a named defendant when he was employed by the state attorney general’s office prior to becoming a judge, in fact the Subject Judge and the defendant were not employed by the attorney general’s office at the same time. The Subject Judge’s employment with the state attorney general’s office long pre-dated the defendant’s employment there.

Based on the foregoing, this 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: January 9, 2024)

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: January 9, 2024