

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-23-90127, 03-23-90128

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: January 30, 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 I”) and a United States Magistrate Judge (“Subject Judge II”). 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 state prisoner, is a pro se plaintiff in two civil rights actions before Subject Judges I and II. In the first matter, Subject Judge II recommended dismissal of all

claims except one retaliation claim. Subject Judge I adopted the recommendation and entered a partial dismissal; the case remains ongoing. In the second matter, the defendants filed a motion to dismiss the complaint. Approximately six months later – and two months after the filing of this complaint of judicial misconduct – Subject Judge II issued a report and recommendation recommending that the motion be granted. Subject Judge I has not yet acted on the recommendation.

This complaint of judicial misconduct alleges that the partial dismissal of the first civil action was motivated by favoritism to the defendants, because the claims that were dismissed allegedly were “the same” as the claim that survived dismissal and therefore should not have been treated in an “uneven” manner. Complainant additionally alleges that, at the time he filed this misconduct complaint, it had been approximately three months since the motion to dismiss had been filed in the second action, and “it has never taken this long for the Magistrate to issue a report and recommendation.” Complainant surmises that Subject Judge II must have been deliberately delaying a ruling in order to undermine Complainant’s other litigation efforts.

Complainant’s disagreement with the partial dismissal of his first pro se action is clearly a merits related dispute, as it questions the correctness of the Subject Judges’ rulings. Merits-related allegations 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.”). This administrative proceeding does not afford

Complainant an opportunity to seek substantive review of the merits of judicial decisions. “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). All such merits related allegations are therefore subject to dismissal. 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 allegations of delay are likewise 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. The motion to dismiss was pending in Complainant’s case for approximately six months before it was resolved. This is not an objectively excessive period of time. Moreover, Complainant’s claim that Subject Judge II acted with an improper motive is based on sheer conjecture and nothing more. The delay claim is thus 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 non-merits-related claims regarding the Subject Judges’ alleged bias in favor of the defendants are devoid of evidentiary support. It is apparent that

Complainant's allegations rest solely upon his disagreement with the merits of judicial rulings. The record in Complainant's proceedings does not substantiate the claims of bias or any improper "affiliation" with the defendants in Complainant's cases. These claims are therefore 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.

Based on the foregoing, the 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

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(Filed: January 30, 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)(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](http://www.ca3.uscourts.gov).

s/ Michael A. Chagares  
Chief Judge

Dated: January 30, 2024