

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-23-90140, 03-23-90141

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 22, 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, filed a pro se civil action that was assigned to Subject Judges I and II. The Clerk entered an order directing Complainant to either pay

the filing fee or a motion to proceed in forma pauperis. Complainant did neither, so Subject Judge I dismissed the case without prejudice for failure to prosecute.

Complainant subsequently filed several motions, which Subject Judge I denied, but Complainant never resolved the fee issue. The case remains closed.

Complainant alleges in this complaint of judicial misconduct that the Subject Judges “twice failed to rule” on claims that include: “[c]ivil Defendants do not need to pay fee,” “[c]ognovit note forged,” “furthering the Donohue straw bond case,” and “E.L.L. censorship on judges financial disclosure at trial.” Complainant does not elaborate on the meaning of these claims. In a sworn supplement, Complainant alleges that the Subject Judges made “inappropriate political comments,” there is “[c]ensorship of electronic law library and no state assistance,” and “[s]ix month deadline to bring case to trial has elapsed.”

If Complainant is attempting to challenge the dismissal of his complaint, the requirement to pay the filing fee or file an in forma pauperis motion, or the denials of his post-judgment motions, such 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.”). Merits-related allegations are 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.

All remaining allegations of misconduct are unsubstantiated. The Subject Judges have not failed to rule on any of Complainant's motions, there is no trial requirement for a case that has been dismissed for failure to prosecute, and Complainant identifies no political comments whatsoever. The record lends no support to any claim of judicial impropriety. Complainant's allegations 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, 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 22, 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.

s/ Michael A. Chagares
Chief Judge

Dated: February 22, 2024