

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-23-90144

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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: March 14, 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 following reasons, 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 litigant pursuing a civil suit against a law firm.

Complainant alleges that the Subject Judge engaged in delay because the Subject Judge “has not redressed the matters therein as 142 days have elapsed.” In the underlying civil

suit, Complainant filed a “Notice of Proposed Complaint of Judicial Misconduct or Disability” three months after filing a lawsuit. The present complaint was filed December 19, 2023, and the Subject Judge entered an order recusing himself several weeks later in the underlying civil suit.

Complainant’s allegation of delay is subject to dismissal as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii) (providing for dismissal where the complaint is “directly related to the merits of a decision or procedural ruling”); see also Rule 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“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.”); Commentary to Rule 4(b)(2) (“a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge . . . assigning a low priority to deciding the particular case.”). Complainant makes no allegation of improper delay or habitual delay.

Moreover, the record has been reviewed and there is no evidence of judicial misconduct. The Subject Judge recused himself from the case after Complainant filed a complaint of judicial misconduct and has taken no other actions in the underlying matter.<sup>1</sup>

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<sup>1</sup> The Rules for Judicial-Conduct and Judicial-Disability Proceedings do not require Subject Judges to disqualify themselves from pending civil or criminal proceedings based on the filing of a complaint of judicial misconduct. A recusal decision, moreover, is a merits-related ruling that cannot be reviewed in this administrative forum. 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 judge’s ruling, including a failure to recuse.”).

The civil suit was reassigned, another judge issued an order, and Complainant filed a notice of appeal. Accordingly, the complaint will also be dismissed because it is frivolous and lacks sufficient evidence to raise a reasonable inference that misconduct occurred.

See Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings; 28 U.S.C. § 352(b)(1)(A)(iii).

For these reasons, 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: March 14, 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: March 14, 2024